November 6, 2020

Ms. Lisa Felice
Michigan Public Service Commission
7109 W. Saginaw Hwy.
P. O. Box 30221
Lansing, MI 48909

Via E-filing

RE: MPSC Case No. U-20763

Dear Ms. Felice:

The following are attached for paperless electronic filing:

- Application for Leave to Appeal the Administrative Law Judge's Ruling on Motion In Limine By Michigan Environmental Council, Grand Traverse Band of Ottawa and Chippewa Indians, Tip Of The Mitt Watershed Council, and National Wildlife Federation
- Proof of Service

Sincerely,

Lydia Barbash-Riley
lydia@envlaw.com

xc: Parties to Case No. U-20763

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of Enbridge Energy, Limited Partnership for the Authority to Replace and Relocate the Segment of Line 5 Crossing the Straits of Mackinac into a Tunnel Beneath the Straits of Mackinac, if Approval is Required Pursuant to 1929 PA 16; MCL 483.1 et seq. and Rule 447 of the Michigan Public Service Commission's Rules of Practice and Procedure, R 792.10447, or the Grant of other Appropriate Relief	U-20763 ALJ Dennis Mack

---

APPLICATION FOR LEAVE TO APPEAL THE ADMINISTRATIVE LAW JUDGE'S RULING ON MOTION IN LIMINE
BY MICHIGAN ENVIRONMENTAL COUNCIL, GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS, TIP OF THE MITT WATERSHED COUNCIL, AND NATIONAL WILDLIFE FEDERATION

TABLE OF CONTENTS

Under Michigan Public Service Commission Rule 433, the Michigan Environmental Council, Grand Traverse Band of Ottawa and Chippewa Indians, Tip of the Mitt Watershed Council, and National Wildlife Federation[1] submit this Application for Leave to Appeal the October 23, 2020 decision of Administrative Law Judge ("ALJ") Dennis W. Mack granting Enbridge's Energy, Limited Partnership's ("Enbridge" or "the Company") Motion in Limine in part. In support of this Application, the MEC, GTB, Watershed Council, and NWF submit the following brief.

I. INTRODUCTION

This proceeding involves Enbridge's request to construct a tunnel under the Straits of Mackinac and install a new 30" pipeline in the tunnel. Even though Enbridge's proposal is complex and will have a significant impact on the continued operational lifespan of Line 5, Enbridge sought to exclude relevant evidence that the Commission must consider under 1929 PA 16 (Act 16) and the Michigan Environmental Protection Act (MEPA). The evidence Enbridge sought to exclude included evidence regarding the tunnel; evidence regarding the public need to extend the life of Line 5 by building the tunnel; evidence regarding the risks of prolonging the life of Line 5 by building the tunnel; and evaluation of climate-related impacts under MEPA.

The ALJ correctly denied Enbridge's motion as it pertained to the tunnel, but incorrectly granted Enbridge's motion to exclude the other issues. These issues should be included in this case because they are variously relevant under the Commission's Act 16 precedents, under MEPA, or both. Further, the public need and risk issues arise from the direct results of Enbridge's proposed project and Enbridge has placed those issues in contention in this proceeding by including them in its application, testimony, and exhibits. Accordingly, the Commission should reverse the ALJ's

[1] Collectively MEC, GTB, Watershed Council, and NWF.

grant of Enbridge's motion regarding the public need and risk issues as well as consideration of climate change under MEPA.

II. STATEMENT OF FACTS AND PROCEEDINGS

Enbridge filed this application on April 17, 2020. Enbridge requested that the Commission grant the Company authority to relocate the segment of Line 5 crossing the Straits of Mackinac into a tunnel, under Act 16 and Commission Rule 447. Enbridge plans to replace the 4-mile segment of its Line 5 pipeline that crosses the Straits with a new pipeline in an underground tunnel below the lakebed of the Straits.[2] Enbridge estimates that the tunnel will take five to six years to develop and cost $350 to $500 million to construct.[3] To construct the tunnel and install the replacement pipeline segment within it, Enbridge requires a new easement, which the Michigan Department of Natural Resources ("DNR") granted to the Mackinac Straits Corridor Authority ("MSCA"), who assigned it to Enbridge.[4] Enbridge also requires a 99-year lease with the MSCA for the tunnel and replacement pipe.[5]

In its application, Enbridge makes a variety of statements regarding the alleged public need for products and services from Line 5. The application states that "Line 5 provides needed energy transportation."[6] The application and testimony describe the history of Line 5; the products and volumes that Line 5 transports; and the route of Line 5 through Michigan.[7] Relying on its

[2] Application, ¶ 3.

[3] Exhibit A-9, p. 14. Note that the tunnel described in this report was expected to be 10 feet in diameter, and therefore the cost of the much wider tunnel now planned could reasonably expected to cost more.

[4] Exhibit A-6.

[5] Exhibit A-5, p. 34, Section 5.3.

[6] Application, section III.B, p. 5.

[7] Application, ¶¶ 12, 13, and 14.

agreements with the State, the application alleges that Line 5 serves important public needs and transports essential products, and will continue to do so after the tunnel replacement project is completed.[8] This brief discusses Enbridge's testimony and exhibits concerning the alleged public need for continued operation of Line 5 further at pages 10-15.

In its application, Enbridge also makes a variety of statements regarding the alleged environmental benefits of Line 5. Enbridge alleges that the placement of the pipeline within the tunnel will eliminate the possibility of an anchor strike, "which was a concern raised by the State of Michigan."[9] Enbridge also alleges that the project "will further protect the aquatic environment against the remote possibility of a release caused by another event;" that "there will be no permanent environmental impacts associated with the Project;" and that "the Project will deliver long-term environmental benefits…."[10] This brief discusses Enbridge's testimony and exhibits concerning the alleged environmental benefits of the Project further at pages 16-22.

As part of its application, Enbridge requested that the Commission declare that the Line 5 tunnel replacement project was already authorized by the Commission's 1953 Orders that initially approved the Line 5 pipeline and required no further approval under Act 16.[11] By Order dated April 2, 2020, the Commission set a schedule for comments and responses regarding Enbridge's request for a declaratory ruling. By Order dated June 30, 2020, the Commission granted Enbridge's

[8] Application, ¶¶ 24 and 32.

[9] Application, ¶ 6.

[10] Application, ¶¶ 6, 34, and 35.

[11] *In the matter of the application of Lakehead Pipeline Company, Inc for approval of construction and operation of a common carrier oil pipeline,* Case No. D-3903-53.1, Order dated March 31, 1953 and Supplemental Order dated May 29, 1953; both included as Exhibit A-3 to the application in this case.

request for a declaratory ruling but denied the company's requested relief. Enbridge filed a petition for rehearing, to which other parties filed responses, that remains pending.

ALJ Dennis Mack granted petitions to intervene by a number of parties at a prehearing on August 12, 2020. The ALJ set a schedule that included the opportunity for motions in limine to restrict the scope of this case by excluding certain issues that Enbridge objected to including in this proceeding. Enbridge filed such a motion, arguing for the exclusion of evidence related to the tunnel; the public need for the project in order to secure and extend the operation of Line 5; environmental risks resulting from Line 5 if the project proceeded; and climate issues. Other parties filed responses. The ALJ held a hearing on September 30 and issued a ruling on October 23, granting in part and denying in part the relief that Enbridge requested. The ALJ denied Enbridge's motion as it to the tunnel, but granted it as to the other issues. This timely appeal followed.

III. STANDARD OF REVIEW

A. Commission standards for interlocutory review.

The Commission recently articulated the standards and process for deciding an interlocutory appeal in DTE Electric's PURPA avoided cost case:

> Rule 433(2) provides that the Commission will grant an application for leave to appeal and review the presiding officer's ruling if any of the following provisions apply:
>
> > (a) A decision on the ruling before submission of the full case to the commission for final decision will materially advance a timely resolution of the proceeding.
> >
> > (b) A decision on the ruling before submission of the full case to the commission for final decision will prevent substantial harm to the appellant or the public-at-large.

> (c) A decision on the ruling before submission of the full case to the commission for final decision is consistent with other criteria that the commission may establish by order.
>
> If the Commission grants immediate review, it will reverse an administrative law judge's ruling if the Commission finds that a different result is more appropriate.[12]

In Consumers Energy's 2018 Integrated Resource Planning case, the Commission granted leave and reversed the ALJ's grant of certain intervenors' motion to strike the company's testimony and exhibits related to PURPA issues, stating:

> The Commission finds that the applications for leave to appeal should be granted because a decision on the ALJ's ruling before the submission of the full IRP case to the Commission will advance the timely resolution of this proceeding and will prevent substantial harm to the appellants and other parties.[13]

The posture of this case is very similar to U-20165. In both cases, the ALJ granted a motion whose effect was to remove certain issues from the case early on. Rather than proceed through discovery and hearing with uncertainty about whether the Commission would ultimately determine that the PURPA issues should have been included in the case, the Commission in U-20165 granted leave in order to make that determination sooner than a final order. Likewise, here the Commission should grant leave in order to advance the timely resolution of this proceeding and prevent substantial harm to the parties by deciding now whether the issues the ALJ excluded should be included – instead of waiting until a final order that could necessitate additional proceedings later.

[12] Case No. U-18091, February 21, 2019, Order, p. 11.

[13] Case No. U-20165, October 5, 2018, Order, p. 17.

B. The Exclusion of Relevant Evidence is an Error of Law.

The Commission has found an error of law with respect to excluding relevant evidence in a circumstance where doing so would limit the scope of the proceeding beyond what the Commission intended.[14] The courts have determined that where a court makes an error of law it has inherently abused its discretion.[15] Furthermore, relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."[16] In Case No. U-7397, the Commission found "that its intent is that a broad interpretation be applied to 'expenditures' so as to encompass all campaign-related expenditures, both direct and indirect."[17] The Commission had already authorized an audit of expenditures of the companies affected, including advertising and electioneering, and therefore found that limiting testimony related to contributions made by vendors and other utilities was improper.[18] The Commission stated that the testimony was relevant because they related directly to allegations of imprudent and unreasonable expenses by the utilities for electioneering and wages.[19]

---

[14] Case No. U-7397, August 16, 1983, Order, p. 4.

[15] *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999) ("[D]ecisions regarding the admission of evidence frequently involve preliminary questions of law, e.g., whether a rule of evidence or statute precludes admissibility of the evidence. This Court reviews questions of law de novo. Accordingly, when such preliminary questions of law are at issue, it must be borne to mind that it is an abuse of discretion to admit evidence that is inadmissible as a matter of law." (citations omitted); *People v Waterstone*, 296 Mich App 121, 132; 818 NW2d 432 (2012) ("A trial court necessarily abuses its discretion when it makes an error of law."); *Kidder v Ptacin*, 284 Mich App 166, 170; 771 NW2d 806 (2009).

[16] MRE 401.

[17] Case No. U-7397, August 16, 1983, Order, p. 6.

[18] *Id.* at 5-6

[19] *Id*. at 5.

Similarly, in the June 30, 2020, Order of this case, the ALJ determined that there was "significant public interest and concern regarding the Line 5 Project's potential environmental impact on the Great Lakes," and thus, determined a contested case proceeding was appropriate.[20] Evidence and testimony regarding the need and risk of the project are relevant. Therefore, an attempt to exclude that evidence now would limit the scope of the case more than the Commission's June 30 Order requires, and is an error of law.

C. Offer of proof.

Commission Rule 433 states in part: "An offer of proof shall be made in connection with an appeal of a ruling excluding evidence."[21] As noted in the application for leave by Bay Mills Indian Community, there are questions regarding the applicability of the offer of proof requirement in this procedural posture. While the underlying motion was styled as a motion in limine, it excluded categories of evidence rather than specific testimony or exhibits, with the objective of narrowing the scope of the case.

In any event, Rule 433 specifies procedures for particular situations – none of which apply directly here. MRE 103 describes an offer of proof as a communication by which "the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked."[22] A commonly-used secondary source states that "no particular form is required;" and suggests either live Q&A testimony out of the presence of the jury or simply "a statement by [counsel] of what the witness would have said if he or she had testified."[23] The latter

[20] Case No. U-20763, June 30, 2020, Order, p. 69.

[21] R 792.10433(3).

[22] MRE 103(a)(2).

[23] Lawson, et al, *Introducing Evidence at Trial* (ICLE), Chapter XII, Offer of Proof, §1.20.

option applies better to the procedural posture here – since the ALJ did not rule at a hearing with witnesses present and discovery that experts will use to formulate their opinions remains pending.

In light of these authorities, MEC, GTB, Watershed Council, and NWF make the following offer of proof. These parties offer first to submit direct testimony by Elizabeth A. Stanton, Ph.D. Dr. Stanton is Director and Senior Economist at Applied Economics Clinic, and her CV is attached as Exhibit 1. Her areas of expertise include evaluating the economics of fossil fuel pipelines. She is expected to testify regarding the public need for the tunnel replacement project to secure and extend the service life of Line 5 over both short- and long-term time horizons.

Second, MEC, GTB, Watershed Council, and NWF offer to submit direct testimony by Richard Kuprewicz. Mr. Kuprewicz is a pipeline engineer with almost 50 years of experience, including oversight of the Trans Alaska Pipeline System. His CV is attached as Exhibit 2. He will testify that Line 5 has a history of crack failures, such that extending the life of the pipeline by replacing the Straits segment into a tunnel will expose inland waters near segments of the pipeline outside the tunnel to extended risks of ruptures based on the condition of the pipeline and its integrity and method of operation. He will also testify that prolonging the operation of the dual pipelines in the Straits while the tunnel replacement project is under development will continue to expose the dual pipeline to a variety of accident risks.

IV. ARGUMENT

A. To determine whether there is a public need to replace the Straits segment of Line 5 with a new pipeline in a tunnel, the Commission must determine whether there is a public need to perpetuate Line 5 for decades to come.

The Commission has noted that "Act 16 provides the Commission with broad jurisdiction to approve the construction, maintenance, operation, and routing of pipelines delivering liquid

petroleum products for public use."[24] The statute authorizes the Commission "to make all rules, regulations, and orders, necessary to give effect to and enforce the provisions of this act."[25] In those orders, the Commission has established various approval criteria for Act 16 pipelines. One of those approval criteria – indeed, a key one here – is whether there is a public need for the project.[26]

As discussed above, Enbridge alleges in its Application that there is a public need for products and services from Line 5. Enbridge further alleges that the tunnel replacement project will eliminate an environmental risk to the Straits. To build the tunnel, Enbridge estimates that it will spend $300 to $500 million.[27] Once it is built, Enbridge will have the right to occupy the tunnel with Line 5 for the next 99 years.[28] Enbridge states in testimony its intent to operate Line 5 well into the future after the project is built.[29]

Before the ALJ, MEC, GTB, Watershed Council, and NWF advanced two distinct issues related to the tunnel's effect on Line 5. The first issue is whether there is a public need to replace the dual pipelines with a new pipeline in a tunnel so as to perpetuate Line 5 for decades to come. The second issue is whether perpetuating Line 5 for decades to come by building the project would perpetuate other environmental risks.

---

[24] *In re Wolverine Pipe Line Company*, Case No. U-13225, July 23, 2002, Order, p. 4.

[25] MCL 460.486.

[26] *In re Enbridge Energy Limited Partnership*, Case No. U-17020, January 31, 2013, Order, p. 5.

[27] Exhibit A-9, p. 14.

[28] Exhibit A-5, p. 34, Section 5.3.

[29] See, e.g., Pre-filed Direct Testimony of Marlon Samuel, p. 5 (asserting that the "utilization of Line 5" of the past ten years "is expected to continue into the future well after the completion of the Project").

In his ruling, the ALJ did not address these questions separately, but instead merged them into a single, misstated question of whether "consideration of the operational aspects of the entirety of Line 5 in conjunction with the proposed activity is warranted under Act 16 and other authority."[30] The ALJ answered this question in the negative, and held that the scope of this case is limited to introducing evidence concerning the activities proposed in Enbridge's application: replacing the dual pipelines in the Straits with a new pipeline in a tunnel.[31] Because evidence concerning what the ALJ characterized as the "operational aspects of the entirety of Line 5" falls outside the category of evidence concerning the tunnel and the segment of pipe that would go into the tunnel, the ALJ excluded such evidence from this case.[32] That decision was wrong for several reasons. MEC, GTB, Watershed Council, and NWF address the ALJ's error with respect to public need first, and the ALJ's error with respect to environmental risk in the next section.

No one claims that Line 5 would shut down immediately if the Commission denies approval of the tunnel replacement project. That said, no one denies that Line 5 will operate longer *with* the project, either. Otherwise, Enbridge would not be investing half a billion dollars in the project.

While Enbridge claims that Line 5 will operate indefinitely whether the project is built or not, the continued viability of the dual pipelines is under review in both the executive and judicial branches.[33] Either or both of these reviews could in the near time horizon result in termination of Enbridge's claimed property right to operate the dual pipelines on public property owned by the

[30] Ruling on Motion in Limine ("Ruling"), p. 14.

[31] *Id*.

[32] *Id.* at 14-15.

[33] Exhibit 3, Statement dated June 27, 2019 from Governor Whitmer's Office; *Attorney General v Enbridge*, Ingham County Circuit Court Case No. 19-474-CE.

State of Michigan, due to allegations that Enbridge is in breach of agreed-on obligations to the State.

It is plain that by making this large investment and signing a 99-year lease, Enbridge seeks to secure Line 5's continued operation for a long time to come, in a way that it is not a foregone conclusion now. Because the purpose of the project is to continue the life of Line 5 for decades to come, the Commission must determine whether there is a public need for a tunnel to extend Line 5's operation for so long into the future. This determination would benefit from the testimony by economist Elizabeth Stanton referenced in the offer of proof, above.

To the extent Enbridge asserts that Line 5 will continue to operate indefinitely whether the project is built or not, then that is a question of fact on a contested issue. The Commission should allow a record to be developed on that issue. Contested cases are not decided by taking one party's position as a given.

Before the ALJ, Staff acknowledged that "because the proposed project could extend the life of Line 5 through various improvements to the existing pipeline (e.g. relocating and redesigning the pipeline segment within the utility tunnel), one could argue that the project opens the door for the Commission to revisit the 1953 easement and require Enbridge to once again demonstrate need."[34] Staff raised the concern that "permitting the Commission to revisit a prior determination of need for an existing pipeline in this case would have a chilling effect on future applicants interested in obtaining Commission approval for improving, relocating, or reinforcing segments to an existing pipeline."[35]

[34] Staff's Response to Enbridge's Motion in Limine, pp. 15-16.

[35] *Id.*

Respectfully, however, no one argued that review of the tunnel replacement project permits the Commission to revisit the prior determination of need. To the contrary, to approve the new project the Commission must determine whether there is a public need to extend the life of Line 5 for decades into the future, by replacing the dual pipelines with a $500 million tunnel and a 99-year lease. If the Commission finds that there is not such a need, authorization for the existing pipeline would not be revoked. Rather, authorization for the new project would simply not be granted.

Similarly, no one is challenging the Commission's 1953 decisions to authorize construction and operation of the pipeline. The question of whether a public need existed for an oil pipeline in 1953 is distinct from the question of whether a tunnel is needed to extend the life of that pipeline 70 years later. Further, under the Administrative Procedures Act, the parties are entitled to present evidence on the extension of life of Line 5. Enbridge has introduced arguments and evidence concerning the need for this project in its application, supporting testimony, and exhibits. Section 72 of the APA provides that "[t]he parties shall be given an opportunity to present oral and written arguments on issues of law and policy and an opportunity to present evidence and argument on issues of fact."[36] Enbridge has asserted certain facts and the parties now are entitled to respond under the APA.

First, Enbridge discussed the need for the project in its application, including in a section titled "Line 5 Provides Needed Energy Transportation."[37] Elsewhere in the application, Enbridge quotes the First Agreement between the State of Michigan and Enbridge, stating that "the continued operation of Line 5 through the State of Michigan serves important public needs by

[36] MCL 24.272.

[37] Enbridge's Application Page 5, Section B.

providing substantial volumes of propane to meet the needs of Michigan citizens, supporting businesses in Michigan, and transporting essential products, including Michigan-produced oil to refineries and manufacturers."[38] Included as exhibits are the other Agreements between the State and Michigan that detail the alleged need for the continued operation of Line 5 and the public need for propane.[39]

Enbridge also submitted pre-filed testimony and comments from witnesses related to the need of the project. In his direct testimony, witness Marlon Samuel stated:

> Given the existing amount of supplies and the continued expected demand, this utilization of Line 5 is expected to continue into the future well after the completion of the Project because there is a lack of sufficient capacity on other pipelines to serve these markets and transport these volumes and types of light crude oil, light synthetic crude and NGLs.[40]

Enbridge witness Amber Pastoor quotes the First Agreement between Enbridge and the State of Michigan in her testimony, again stating that the document recognized the continued operation of Line 5 as serving important public needs.[41]

Because Enbridge has included allegations and evidence concerning the need for long-term continued operation of Line 5 through its application, direct testimony, and exhibits, Enbridge has subjected those issues to the formal administrative hearing process. As such, the ALJ's limiting the scope of this case contravenes the APA. Other parties have the right to present evidence and arguments on issues of fact related to the need for the project and continuation of transporting

[38] Enbridge's Application Page 10, paragraph 24 citing the First Agreement Exhibit A-8.

[39] Exhibit A-8 the First Agreement between the State of Michigan and Enbridge and Exhibit A-10 the Second Agreement between the State of Michigan and Enbridge.

[40] Samuel Direct, p. 5.

[41] Pre-Filed Direct Testimony of Amber Pastoor, pp. 13-15.

products under the Straits for decades. The Commission should therefore reverse the ALJ's ruling and order that the parties have the right to present evidence on the necessity of the project and the transportation of oil under the straits.

In sum, because the project is intended to secure continued operation of Line 5 and extend its life for decades, the public need for Line 5 to operate for decades to come is necessarily part of the Commission's review under Act 16. Further, the APA provides that the parties shall have the opportunity to present evidence and arguments on this issue of fact as Enbridge has affirmatively put the need of the project into play. Likewise, concerns about the risks that Line 5 will continue to pose for decades to come if the project is approved must also be part of the Commission's review, under Act 16 and MEPA. This issue is addressed in the next section.

B. The risks of the project include risks that result from extending the operational life of Line 5 by building the tunnel.

1. In addition to, or as part of, its three Act 16 factors, the Commission also considers risks related to the project.

Another one of the Commission's review criteria under Act 16 is whether the proposed pipeline is routed in a reasonable manner.[42] Whether as part of that criterion, or as a separate criterion, the Commission has in some cases conducted a broad review of potential risks and environmental consequences in Act 16 proceedings. The most prominent examples are the *In re Wolverine* cases.[43] In *Wolverine 1,* the Commission reviewed two segments of a proposed petroleum products pipeline. One of the pipeline segments was proposed to run within the same corridor as an existing 8-inch pipeline owned by Wolverine, and was generally agreed to be an

[42] *In the matter of the application of Enbridge Energy, Limited Partnership*, Case No. U-17020, January 31, 2013, Order, p. 5.

[43] *In re Wolverine Pipe Line Company*, Case No. U-12334, March 7, 2001, Order (*Wolverine 1*) and *In re Wolverine Pipe Line Company*, Case No. U-13225, July 23, 2002, Order (*Wolverine 2*).

improvement over that existing line.[44] A portion of that corridor ran through a densely populated area between I-96 and I-69.[45] Staff provided testimony on a broad range of potential risks associated with that portion of the segment:

> …Wolverine's decision to place its new line in such a densely developed area needlessly "increases the risk of third-party damage" and heightens the potential for "significant adverse impacts if an accident occurs." Among the issues that the Staff felt Wolverine failed to adequately address was the effect that this section of the proposed pipeline system could have on (1) Meridian Township's water wells and those of other nearby property owners, (2) the Ingham County Medical Care Facility and various other senior living facilities that are located in close proximity to the line's route, (3) the Township's water treatment facility, part of which sits directly above the line's proposed path, (4) the Okemos shopping district, including the Meridian Mall, through which the route would pass, (5) schools and public safety offices located adjacent to the proposed pipeline, and (6) apartment complexes through which the line would run.[46]

In light of those concerns, Staff recommended that the Commission deny Wolverine's application.[47] The ALJ agreed, reasoning that "Act 16 grants the Commission 'broad powers and authority to regulate the proposed pipeline,' including the ability to address 'public interest and public safety concerns' raised by Wolverine's proposal."[48] The ALJ also found that "although much of the project would constitute 'an upgrade from the existing 8-inch pipeline' and that its construction 'would have only minimal impact' on the environment, the risks inherent in routing

[44] *Wolverine 1*, p. 4.

[45] *Id.* at 6.

[46] *Id.* at 6-7.

[47] *Id*. at 7.

[48] *Id.* at 8, citing PFD, p. 8.

the 12-inch line through the densely developed area between I-96 and I-69 overshadowed the system's potential benefit."[49]

Wolverine withdrew its application for the segment between the two freeways, but took exception to the ALJ's recommendations concerning the scope of the Commission's authority. The Commission rejected that exception and held that it "has broad jurisdiction over the construction and operation of pipeline systems like that proposed by Wolverine. Inherent in that jurisdiction is the power to make a qualitative evaluation regarding whether a proposed system would be safe and in the public interest."[50]

In *Wolverine 2*, the Commission approved a revised route for the segment at issue in *Wolverine 1* – this time in the I-96 right-of-way. While the Commission found in favor of Wolverine on the factual issues based on the record in that case, the Commission again reviewed a broad range of potential environmental risks associated with the project. These included the inherent risks of pipeline failure; the risk to homes; the risk to motorists; the safety devices and design features of the line; the risk of explosion; the risk of groundwater contamination; and racial and demographic inequities associated with the route selection.[51]

Two key takeaways from the *Wolverine* cases are germane to this proceeding. First, the Commission has conducted an expansive review of risks associated with an Act 16 project, and should do so again here. Such an expansive review is consistent with the Commission's broad authority over Act 16 pipelines as well as the broad range of risks related to these facilities.

[49] *Id.*, citing PFD, p. 10.

[50] *Id.* at 13.

[51] *Wolverine 2*, pp. 17-35.

Second, the Commission has evaluated the risk an Act 16 project against the risks of other available alternatives - rather than simply comparing the incremental risk of the new project with the risk of the existing project that it is replacing. Enbridge urges the Commission to do the latter here – and limit review to comparing the risk of housing a four-mile segment of pipe in a tunnel to the risk of leaving the same length of pipe suspended on anchors on the lake bed. Such a constrained review in *Wolverine* would have prevented comparison of the route of the new pipeline to other possible routes, because the new pipe would have been incrementally safer than the old pipe on the same route.

In his ruling, the ALJ only addressed one of the *Wolverine* cases in a footnote. The ALJ mischaracterized the undersigned parties' position to be that *Wolverine* stands "for the proposition that Act 16 requires an examination of the entire pipeline system..."[52] The ALJ rejected that proposition and asserted a better reading of *Wolverine* is that "the Commission applied the Act 16 standards to the portion of the pipeline proposed to be replaced." The ALJ's point is not disputed for what it is, but its application to this proceeding is inapt. The point is not that *Wolverine* requires consideration of risks from the entire pipeline system – it is that *Wolverine* requires consideration of all risks that foreseeably result from the project.

Here, as noted in the discussion of public need, the tunnel will secure and extend the operational life of Line 5 for up to an additional 99 years. As Mr. Kuprewicz will testify, building the tunnel to extend the life of the pipeline will prolong and thereby increase risks from the portions of the pipeline that are not in the tunnel, compared to a scenario where the tunnel is not built and the operating life of Line 5 is not extended thereby. As Mr. Kuprewicz will also testify, continuing to operate the dual pipes on the lake bottom for another six to ten years while the tunnel is

[52] Ruling, p. 15, n 8.

developed will also prolong and increase risks, in comparison to the very real possibility that operation of the dual pipelines may be nearing its end due to the executive and judicial branch reviews referenced above. Because these risks result from the tunnel replacement project, the Commission should consider them in its evaluation of risk – which under the *Wolverine* cases should be broad. And as with need, the result of an unfavorable review is to deny approval of the tunnel replacement project – not to revoke the 1953 approval for the pipeline.

Further, as noted in the public need section above, the APA ensures that parties have an opportunity to present evidence on issues of fact.[53] Enbridge has submitted information in its Application regarding the risk associated with the project which, as with the need for the project, warrants a response from the other parties under the APA. Enbridge's Application states that "[t]he purpose of the Project is to alleviate the environmental concerns to the Great Lakes raised by the State of Michigan relating to the approximate four miles of Enbridge's Line 5 that currently crosses the Straits of Mackinac."[54] Elsewhere in the Application, Enbridge claims that "[r]elocating the pipe in the tunnel protects the aquatic environment." Thus, at the inception of this case, Enbridge put into play concerns about the continued operations of Line 5.

Enbridge has also supplied testimony regarding the risk of the continued operation of Line 5 and the project. In Amber Pastoor's testimony, she states that "locating the pipeline in the tunnel virtually eliminates the already very small risk of a release from Line 5 impacting the Straits."[55] In Paul Turner's direct testimony, he states, "[t]here would only be negligible temporary, and no permanent, impacts associated with the construction of the replacement pipe segment."[56] He

[53] MCL 24.272.

[54] Enbridge's Application, ¶2.

[55] Pastoor Direct, p. 12.

[56] Pre-filed Direct Testimony of Paul Turner, p. 6.

further states, "[g]iven that the construction of the tunnel is not part of the Project, the impacts of the Project are minimal to the environment."[57] This second statement is striking, as the tunnel has been declared to be a part of the project. Thus, the implication is that there would be more than minimal impacts to the environment from the project deserving review and consideration.

Finally, Enbridge has submitted several Exhibits related to environmental concerns of Line 5 and the project. The Agreements between the State of Michigan and Enbridge included as exhibits A-8 and A-10, acknowledge that the Straits Crossing is "in proximity to unique ecological and natural resources that are of vital significance to the State and its residents, to tribal governments and their members, to public water supplies, and to the regional economy…" and "present in important infrastructure corridors."[58] These Agreements also state that "the work done and to be done at the water crossings…adds protections to the health, safety, and welfare of Michiganders and increases protection Michigan's environment and natural resources."[59] The Agreements further state that the "Tunnel is expected to eliminate the risk of a potential release from Line 5 at the Straits."[60]

Enbridge also includes the Tunnel Agreement as an exhibit.[61] As part of the Tunnel Agreement, Enbridge was required to complete a Geotechnical Baseline Report, "a document that described the anticipated subsurface conditions and how they will influence construction, constituting a guidance document for bidding a project and contractual document for managing

[57] *Id.* at 5.

[58] Exhibit A-8.

[59] Exhibit A-1, Third Agreement 4.2.

[60] *Id.*

[61] Exhibit A-5.

geotechnical risk."[62] Further, Enbridge included their Alternatives for Replacing Enbridge's Dual Line 5 Pipelines Crossing the Straits of Mackinac, which discusses the risks for different approaches to the Project[63] and their Environmental Protection Plan, which discusses construction-related environmental policies, procedures, and mitigation measures.[64] These reports are considerable in size and detail, and there are many features that deserve review and response by all parties to ensure environmental risk has been adequately considered.

Enbridge has put into issue the environmental risks associated with this project through its submissions of their application, testimony, and exhibits. As such, under the APA, the parties have the right to respond using evidence and arguments. As noted above, therefore, the Commission should order that the parties have the right to present evidence on the environmental risks associated with the project.

2. The Commission must independently consider the safety of Line 5 and the impact of extending its operational life to satisfy the Michigan Environmental Protection Act.

a. <u>MEPA requires broad consideration of the likely effects of the conduct under review.</u>

MEC, GTB, Watershed Council, and NWF agree with the Ruling that the utility tunnel "is necessarily part of the 'conduct' in a licensing proceeding subject to review under MEPA."[65] As MEC, GTB, Watershed Council, and NWF noted in their response to Enbridge's Motion in Limine, the Commission cannot adequately conduct a MEPA analysis of Enbridge's proposal to

[62] Exhibit A-5 (p. 3 *see* Section 1.1(r)).

[63] Exhibit A-9.

[64] Exhibit A-11.

[65] Ruling, p. 17.

relocate and replace Line 5 within a tunnel if the Commission does not assess the tunnel itself.[66] However, the Commission should reverse the ALJ's ruling on MEPA to the extent that it would restrict the evidence the Commission should review to exclude the environmental impacts of extending the life of Line 5 or of the line's safety.[67] Further, while MEC, GTB, Watershed Council, and NWF do not disagree that the Commission may seek the input of expert agencies such as EGLE and the Army Corps of Engineers, such input does not obviate the requirement for the Commission to conduct its own analysis of the project's environmental impacts.

Section 5(2) of MEPA requires:

> In administrative, licensing, or other proceedings, and in any judicial review of such a proceeding, the alleged pollution, impairment, or destruction of the air, water, or other natural resources, or the public trust in these resources, shall be determined, and conduct shall not be authorized or approved that has or is likely to have such an effect if there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare.[68]

In other words, the Commission has two responsibilities under MEPA: (1) to determine whether the proposed course of conduct will pollute, impair, or destroy natural resources; and (2) not authorize the proposed conduct if it is likely to have that effect and there are feasible and prudent alternatives. The conduct under review and the likely effect of that conduct are broadly linked, but are nevertheless two different considerations. The first is the conduct itself; *i.e.*, what the Applicant is proposing to do. The second is the determination of the effect of that conduct.

[66] Joint Respondents' Response to Enbridge's Motion in Limine, p. 19.

[67] While the Ruling does not explicitly purport to limit the Commission's MEPA review in this way, the Ruling's granting of Enbridge's Motion in Limine regarding the operational aspects of Line 5 including public need and safety leave the scope of the evidence the Commission may review unclear.

[68] MCL 324.1705(2).

"Effect" means "Something produced by an agent or cause; a result, outcome, or consequence."[69] Given that an applicant's conduct has the likelihood of producing multiple effects, this necessarily requires a broader evidentiary scope to appropriately review than just the conduct alone.

So, even though the only "conduct" that the Commission may ultimately authorize is the relocation of the pipeline and the associated tunnel construction, that does not foreclose the Commission from considering evidence about the safety of the pipeline as it relates to environmental impacts or the impacts of Line 5's continued operation. The safety of Line 5 is particularly relevant because in the event the Commission determines Enbridge's proposed project adversely impacts the environment and there are no feasible alternatives, the Commission must only allow the action if the impairment "is consistent with the promotion of the public health, safety and welfare in light of the state's paramount concern for the protection of its natural resources . . . ."[70] Further, as described elsewhere in this brief, the purpose of the project is to extend the life of Line 5 (both as a physical and as a legal matter pursuant to the Tunnel Agreement). Therefore, such evidence is relevant and necessary to determining the effect that Enbridge's proposed conduct is likely to have.

Regarding the Ruling's statement that "some degree of deference must be afforded" EGLE and the Army Corps of Engineers' environmental review of the tunnel construction, MEC, GTB, Watershed Council, and NWF respectfully note that the Commission must conduct an independent analysis of the evidence presented both by interveners in this case and the expert agencies.[71] The

---

[69] EFFECT, *Black's Law Dictionary* (11th ed 2019).

[70] *Michigan State Hwy Comm v Vanderkloot*, 392 Mich 159, 185; 220 NW2d 416 (1974) (emphasis added).

[71] Ruling, p. 17. Commission Staff appears to agree with this interpretation of MEPA, noting in its Response that "Although other agencies conduct their environmental review, such as EGLE, the Commission still has an independent obligation to review the results of that analysis." Staff Response to Enbridge's Motion in Limine, p. 12.

Commission has a substantive duty to conduct the MEPA analysis described above even when the statute under which the applicant is seeking approval for the conduct does not otherwise require environmental review.[72] The Michigan Supreme Court has held that an agency's "failure . . . to reasonably comply with those duties may be the basis for a finding of . . . abuse of discretion."[73] MEPA may not require the Commission to conduct an independent investigation of the potential environmental impacts of Enbridge's proposal,[74] but MEPA – as well as the APA – certainly mandate that the Commission exercise its own judgment.[75]

b. The Pipeline Safety Act does not preempt the Commission's consideration of safety in its MEPA review.

The ALJ's Ruling mentions but does not squarely address Enbridge's assertion that the Pipeline Safety Act (PSA) preempts "all state laws and actions that seek to regulate interstate pipeline safety in purpose or effect."[76] We encourage the Commission to clarify that the PSA does not preempt or in any way limit the Commission's MEPA review in this case, particularly with regards to the Commission's consideration of the safety of Line 5. The PSA's preemption provision is narrow. It provides in relevant part: "A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation."[77] As

[72] *Vanderkloot*, 392 Mich at 184.

[73] *Id.* at 191.

[74] *Buggs v Michigan Pub Serv Comm*, unpublished per curiam opinion of the Court of Appeals, issued January 13, 2015 (Docket No. 315058), p. 9, Exhibit 4, aff'd sub nom *In re Application of Encana Oil & Gas re Garfield 36 Pipeline*, unpublished per curiam opinion of the Court of Appeals, issued May 16, 2017 (Docket No. 329781), Exhibit 5.

[75] MCL 24.285 ("A decision or order shall not be made except upon consideration of the record as a whole or a portion of the record as may be cited by any party to the proceeding and as supported by and in accordance with the competent, material, and substantial evidence.").

[76] Enbridge's Motion in Limine, p. 14; see also Ruling, p. 11

[77] 49 USC 60104(c).

explained above, an agency's Section 5(2) MEPA review considers the environmental impacts of the applicant's conduct. MEPA is "a source of supplementary Substantive environmental law" that requires agencies to determine whether their actions are likely to pollute, impair, or destroy the air, water, or other natural resources or the public trust therein.[78] It is not, however, a safety standard.

Decisions interpreting the scope of preemption under the PSA support this conclusion. For example, the District Court of Maine held that a local ordinance "prohibit[ing] the loading of crude oil onto tankers" was not preempted by the PSA for multiple reasons including that "a prohibition is not a standard."[79] Instead, "'[s]tandard' means '[a] criterion for measuring acceptability, quality, or accuracy,' . . . or 'something set up and established by authority as a rule for the measure of quantity, weight, extent, value, or quality.'"[80] The cases that Enbridge cited in its motion to support a preemption argument likewise show that there must actually be a standard purporting to regulate pipeline safety at issue.[81] MEPA Section 5(2) requires the consideration of harm to the environment and prohibits conduct that causes this harm when there are feasible and prudent alternatives. MEPA does not provide any specific criteria or quantitative measures for making this

[78] *Vanderkloot*, 392 Mich at 184.

[79] *Portland Pipe Line Corp v City of S Portland*, 288 F Supp 3d 321, 429-430 (D Me, 2017).

[80] *Id.* at 429 (alteration in original) (quoting *Standard*, Black's Law Dictionary (10th ed 2014) and *Standard*, *Merriam-Webster's Collegiate Dictionary*, https://www.merriam-webster.com/dictionary/standard).

[81] *See Olympic Pipe Line Co v Seattle*, 437 F3d 872, 879-80 (CA 9, 2006) (Franchise Agreement adopted as municipal ordinance and Indemnity Agreement preempted by PSA because they imposed safety standards); *Kinley Corp v Iowa Utilities Bd*, 999 F2d 354 (CA 8, 1993) (PSA preempts state law that imposed safety standards on interstate hazardous liquid pipelines); *Williams Pipe Line Co v City of Mounds View*, 651 F Supp 551, 553, 569 (D Minn, 1987) (county resolution imposing condition that "[t]he county engineer had the right to 'make all rules with respect to possible hazards as he shall deem necessary and advisable'" preempted by PSA because "the clear Congressional goal of a national standard for hazardous liquid pipeline safety would be thwarted" if landowners could all demand compliance with their own safety standards.).

determination and was not developed to regulate pipeline safety specifically unlike the challenged state and local measures in the cases Enbridge cites. Therefore, MEPA is not a standard that can be preempted by the PSA.

Along the same lines, the Michigan Court of Appeals recently held that the PSA did not preempt either Mich Admin Code, R 336.1901 (rule prohibiting air contaminant or water vapor) or the St. Clair Township nuisance ordinance because the state rule and local ordinance did not "directly regulate pipelines and pipeline facility safety."[82] The Court reasoned that:

> [A]lthough defendants may complain that the rule and ordinance indirectly affect the safety of the pipelines and pipeline facilities, "[a] local rule may incidentally affect safety, so long as the effect is not 'direct and substantial.' " *Texas Midstream Gas Srvs, LLC v City of Grand P[r]airie*, 608 F3d 200, 211 (CA 5, 2010), citing *English v Gen Elec Co*, 496 US 72, 85; 110 S Ct 2270; 110 L Ed 2d 65 (1990); see also *Schneidewind v ANR Pipeline Co*, 485 US 293, 308; 108 S Ct 1145; 99 L Ed 2d 316 (1988) ("Of course, every state statute that has some indirect effect on rates and facilities of natural gas companies is not preempted."). Therefore, because R 336.1901 and St. Clair Township Ordinances, 75, <u>do not directly regulate pipelines and pipelines facilities, but merely have an insubstantial and incidental effect on them</u>, we conclude that the incidental effect on pipeline safety does not undermine Congress's intent in enacting the PSA.[83]

The safety of Line 5 is relevant to the Commission's assessment of the project's potential to pollute, impair, or destroy the environment or the public trust therein. While the Commission's ultimate decision in its MEPA analysis may have an "incidental effect" on the safety of Line 5, it would not constitute the enforcement of a safety standard that the PSA could preempt.

---

[82] *Davis v Sunoco Pipeline Ltd Partnership*, unpublished per curiam opinion of the Court of Appeals, issued June 18, 2020 (Docket No. 346729), p. 6, Exhibit 6

[83] *Id.* (emphasis added).

3. The Commission must consider the impact of prolonging Line 5's operation on Tribal treaty-reserved rights to natural resources impacted by Line 5.

MEC, GTB, Watershed Council, and NWF support the arguments of Bay Mills Indian Community ("Bay Mills") and the Little Traverse Bay Bands of Odawa Indians ("LTBB") related to the Commission's duty to consider evidence of the impacts of Enbridge's proposal on treaty-protected resources in the ceded territories. By extending the life of Line 5, Enbridge's proposal prolongs the risk to these resources both in the Straits and along the entirety of the pipeline. Enbridge gained no vested or paramount rights with respect to these Tribal treaty interests with the Commission's 1953 Orders authorizing the Lakehead pipeline.[84]

Further, the Tribes who have intervened in this proceeding have property rights that the Commission may not take action to impact before full consultation and without full consideration of those treaty-reserved rights that predate statehood. The Commission cannot satisfactorily meet its obligation to consult and adequately assess the potential harm to the Tribes' property rights if evidence of public need and safety is excluded.

C. The Commission may consider climate change in its MEPA analysis.

The Commission should reverse the ALJ's ruling granting Enbridge's request to exclude consideration of climate change from the Commission's MEPA analysis. The ALJ's ruling relies on an incorrect extrapolation of *Buggs v Public Service Commission, et al* and the underlying

[84] *See United States v Michigan*, 471 F Supp 192, 238 (WD Mich, 1979) aff'd 653 F2d 277 (CA 6, 1981), cert den, 454 US 1124 (1981); see also *Winters v United States*, 207 US 564, 576-77 (1908) (implied tribal treaty rights to water are paramount to subsequent state perfected water rights); *National Audubon Society v Superior Court*, 33 Cal 3d 419; 658 P2d 709; 189 Cal Rptr 346; 13 Envtl L Rep 20,272 (1983) (reserved rights are paramount to subsequently obtained private rights) .

Commission orders to the circumstances of the instant case.[85] In the *Buggs* cases, the Commission declined to consider the possibility of future gas wells and environmental impairment from hydraulic fracturing in its MEPA review of two gathering lines because "the topic of future forest fragmentation was neither ripe for review nor within the PSC's jurisdiction."[86] However, unlike hydraulic fracturing, there is no regulatory body in Michigan that has exclusive authority to regulate climate change issues. Instead, it is an issue that all state agencies with regulatory powers that impact the environment must consider at some level, and would inform an agency's MEPA analysis if evidence of climate change-related pollution, impairment, or destruction of natural resources tied to conduct the agency authorizes is presented. In fact, the Commission has previously taken climate change into account. For example, in Case No. U-15985, the Commission adopted the Residential Ratepayer Consortium's proposal to weather normalize sales volumes in the case using a 15-year rolling average in part because the company's proposed "30-year normalization method does not adequately account for climate change experienced in Mich Con's service territory . . . ."[87] The Commission also envisioned consideration of climate change in its

[85] Ruling, p. 19. Staff's Response to Enbridge's Motion in Limine also argues that climate change and the impacts of greenhouse gas emissions should be excluded from the Commission's MEPA review because "MEPA does not mention global climate change." Staff Response to Enbridge's Motion in Limine, p. 17. But climate change causes the pollution, impairment, and destruction of natural resources and the public trust therein, and therefore falls clearly within the ambit of the statute. Further, MEPA's silence on a specific environmental impact does not exclude that impact from consideration. The contrary interpretation, which Staff suggests, would require every specific environmental issue to be described in MEPA in order for it to be considered.

[86] *In re Application of Encana Oil & Gas re Garfield 36 Pipeline*, unpublished per curiam opinion of the Court of Appeals, issued May 16, 2017 (Docket No. 329781), p. 10. The Commission noted that "The Commission lacks the statutory authority to regulate hydraulic fracturing, or the drilling of gas wells in Michigan. That authority, and the concomitant environmental obligations that it engenders, rests with the State Supervisor of Wells and the Department of Environmental Quality." Case Nos. U-17195 & U-17196, September 23, 2015, Order on Remand, p. 7, n 2.

[87] Case No. U-15985, June 3, 2010, Opinion and Order, p. 39.

IRP process by "requir[ing] the utilities to model a hard cap on emissions in the Environmental Scenario as opposed to placing a price on carbon."[88] As the administrative body that regulates energy in Michigan, it is unreasonable to suggest that the Commission cannot consider climate in its MEPA analysis just because it does not regulate the emissions themselves. MEPA does not require such a restrictive scope; if it did, the Commission would be prevented from considering essentially every environmental impact (including impacts to endangered species, which the Commission considered in *Buggs*) because it does not have express jurisdiction over environmental issues under Act 16 and other statutes primarily delegated to the Commission.

Regarding the ripeness issue in *Buggs*, the petitioners in that case argued that the Commission should have considered the impacts of hypothetical future hydraulic fracturing operations.[89] Enbridge's use of Line 5 to transport oil and its plans to continue using Line 5 for that purpose are concrete and the reason for Enbridge's application in this case. The ALJ's overly expansive reading of *Buggs* would have the Commission conduct its MEPA analysis in a vacuum with respect to the known impacts of climate change. The Court of Appeals did not intend this in *Buggs*, and the Commission has not done so in the past.

V. CONCLUSION AND RELIEF REQUESTED.

For all of the reasons stated herein, the Michigan Environmental Council, Grand Traverse Band of Ottawa and Chippewa Indians, Tip of the Mitt Watershed Council, and National Wildlife Federation respectfully request that the Commission reverse the portions of the ALJ's ruling granting Enbridge's motion in limine and clarify the scope of MEPA review as described above.

[88] Case No. U-18418, November 21, 2017, Order, p. 72.

[89] Case Nos. U-17195 & U-17196, September 23, 2015, Order on Remand, p. 7.

Respectfully submitted,

OLSON, BZDOK & HOWARD, P.C.
Counsel for MEC, GTB, Watershed Council, and NWF

Date: November 6, 2020

By: 
Digitally signed by Lydia Barbash-Riley
Date: 2020.11.06 13:32:15 -05'00'

Christopher M. Bzdok (P53094)
Lydia Barbash-Riley (P81075)
Abigail Hawley (P82343)
420 E. Front St.
Traverse City, MI 49686
Phone: 231/946-0044
Email: chris@envlaw.com
lydia@envlaw.com
abbie@envlaw.com

OLSON, BZDOK & HOWARD, P.C.
Co-Counsel for GTB

Date: November 6, 2020

By: 
Digitally signed by William Rastetter
Date: 2020.11.06 13:32:46 -05'00'

William Rastetter (P26170)
Tribal Attorney
Grand Traverse Band of Ottawa and Chippewa Indians
Christopher M. Bzdok (P53094)
Lydia Barbash-Riley (P81075)
Abigail Hawley (P82343)

Applied Economics Clinic
Economic and Policy Analysis of Energy, Environment and Equity

Elizabeth A. Stanton, Ph.D., Director and Senior Economist
1012 Massachusetts Avenue, Arlington MA 02476 O liz.stanton@aeclinic.org O 781-819-3232

PROFESSIONAL EXPERIENCE

Applied Economics Clinic, Arlington, MA. *Director and Senior Economist*, February 2017 – Present.

The Applied Economics Clinic provides technical expertise to public service organizations working on topics related to the environment, consumer rights, the energy sector, and community equity. Dr. Stanton is the Founder and Director of the Clinic (www.aeclinic.org).

Liz Stanton Consulting, Arlington, MA. *Independent Consultant*, August 2016 – January 2017.

Providing consulting services on the economics of energy, environment and equity.

Synapse Energy Economics Inc., Cambridge, MA. *Principal Economist*, 2012 – 2016.

Consulted on issues of energy economics, environmental impacts, climate change policy, and environmental externalities valuation.

Stockholm Environment Institute - U.S. Center, Somerville, MA. *Senior Economist*, 2010 – 2012; *Economist*, 2008 – 2009.

Wrote extensively for academic, policy, and general audiences, and directed studies for a wide range of government agencies, international organizations, and nonprofit groups.

Global Development and Environment Institute, Tufts University, Medford, MA. *Researcher*, 2006 – 2007.

Political Economy Research Institute, University of Massachusetts-Amherst, Amherst, MA. *Editor and Researcher – Natural Assets Project*, 2002 – 2005.

Center for Popular Economics, **University of Massachusetts-Amherst**, Amherst, MA. *Program Director*, 2001 – 2003.

EDUCATION

University of Massachusetts-Amherst, Amherst, MA

Doctor of Philosophy in Economics, 2007

New Mexico State University, Las Cruces, NM

Master of Arts in Economics, 2000

School for International Training, Brattleboro, VT

Bachelor of International Studies, 1994

Applied Economics Clinic
Economic and Policy Analysis of Energy, Environment and Equity

AFFILIATIONS

Global Development and Environment Institute, Tufts University, Medford, MA.

Senior Fellow, Visiting Scholar, 2007 – Present

PAPERS AND REPORTS

Woods, B., E.A. Stanton, and D. Wamsted. 2020. *Risks Outweigh Rewards for Investors Considering PJM Natural Gas Projects*. Prepared for the Energy Foundation. [Online]

Woods, B., S. Alisalad, M. Majumder, and E.A. Stanton. 2020 *Municipal Light Plants and Energy Efficiency.* Prepared for Massachusetts Climate Action Network. [Online]

Stanton, E.A. and AEC Staff. Visualizations of Racial Inequity. Applied Economics Clinic. Prepared for Renew New England. [Online]

Castigliego, J. and E.A. Stanton. 2020. *Planning for the Future: Massachusetts Cleans Up Its Heating*. Applied Economics Clinic. Prepared for Gas Leak Allies. [Online]

Stanton, E.A., J. Castigliego, B. Woods, and E. Tavares. 2020. *A Needs Assessment of the Hopkinton-Ashland Transfer Line Replacement Project.* Applied Economics Clinic. Prepared for Town of Ashland. [Online]

Woods, B., E.A. Stanton, and E. Tavares. 2020. *New England Housing Costs: Rent as a Share of Income*. Applied Economics Clinic. [Online]

Woods, B., S. Alisalad and E.A. Stanton. 2020. *Running Behind: New York State's Renewable Transformation*. Applied Economics Clinic. Prepared for Earthjustice. [Online]

Stanton, E.A., B. Woods, E. Tavares, and S. Alisalad. 2020. *New Orleans' Renewable Portfolio Standard: Cost-Effective, Reliable, Resilient*. Applied Economics Clinic. Prepared for Alliance for Affordable Energy. [Online]

Stanton, E.A., B. Woods, J. Castigliego, E. Tavares and S. Alisalad. 2020. *A Whole New Ballgame: Indiana Coal and the New Energy Landscape*. Applied Economics Clinic. Prepared for Citizens Action Coalition of Indiana. [Online]

Stanton, E.A., A. Sommer, C. Hotaling, and C. Neme. 2019. *Report on Indiana Michigan Power Company 2018-19 IRP*. Applied Economics Clinic. Prepared for Citizens Action Coalition of Indiana and Earthjustice. [Online]

Stanton, E.A., B. Woods, J. Castigliego, and E. Tavares. 2019. *Massachusetts Gas versus Massachusetts Climate Goals*. Applied Economics Clinic. Prepared for Gas Leak Allies. [Online]

Stanton, E.A., T. Stasio and B. Woods. 2019. *Marginal Cost of Emissions Reductions in Massachusetts*. Applied Economics Clinic. Prepared for Green Energy Consumer Alliance. [Online]

Applied Economics Clinic
Economic and Policy Analysis of Energy, Environment and Equity

Woods, B. and E.A. Stanton. 2019. *Technosilvicultural Reclamation for Environmental Emission Sequestration*. Applied Economics Clinic. Prepared for Home Energy Efficiency Team and Speak for the Trees. [Online]

Woods, B., E. Tavares, S. Alisalad, and E.A. Stanton. 2019. *Puerto Rico Integrated Resource Plan: Lessons from Hawaii's Electric Sector*. Applied Economics Clinic. Prepared for Earthjustice. [Online]

Woods, B., E. A. Stanton. 2019. *A Future for Indiana Coal: Emissions and Costs of Alternative Electric Generation*. Applied Economics Clinic. Prepared for Citizens Action Coalition of Indiana. [Online]

Stanton, E.A. S. Alisalad, and M. Majumder. 2019. *Comparative Costs of Alaska Fire Management*. Applied Economics Clinic. Prepared for Union of Concerned Scientists. [Online]

Stanton, E.A. and E. Tavares. 2019. *An Analysis of the Need for the Atlantic Coast Pipeline Extension to Hampton Roads, Virginia*. Applied Economics Clinic. Prepared for Mothers Out Front. [Online]

Woods, B., E. A. Stanton, T. Comings, and E. Tavares. *Emission Reduction Synergies for Massachusetts Community Choice Energy Programs, Heat Pumps and Electric Vehicles*. Applied Economics Clinic. Prepared for Green Energy Consumers Alliance. [Online]

Stanton, E.A. and E. Tavares. 2019. *Analysis of the Mountain Valley Pipeline Southgate Project*. Applied Economics Clinic. Prepared for Appalachian Voices. [Online]

Stanton, E.A. 2019. *Update to Pennsylvania Long-Term Renewables Contracts Benefits and Costs*. Applied Economics Clinic. Prepared for Mid-Atlantic Renewable Energy Coalition (MAREC). [Online]

Lopez, R., T. Comings, E.A. Stanton, and E. Tavares. 2019. *Home Heat Pumps in Massachusetts*. Applied Economics Clinic. Prepared for Green Energy Consumers Alliance. [Online]

Woods, B., E.A. Stanton, and E. Tavares. 2019. *Fixing Massachusetts' Gas Leaks Pays for Itself*. Applied Economics Clinic. Prepared for Gas Leak Allies. [Online]

Woods, B. and E.A. Stanton. 2019. *Social Equity Analysis of Carbon Free Boston*. Applied Economics Clinic. Prepared for Green Ribbon Commission. [Online]

Woods, B., E.A. Stanton, and R. Lopez. 2019. *Performance-Based Incentives for Gas Utilities*. Applied Economics Clinic. Prepared for Gas Leak Allies. [Online]

Woods, B. and E.A. Stanton. 2019. *Massachusetts Non-Energy Benefits of Battery Storage*. Applied Economics Clinic. Prepared for Clean Energy Group. [Online]

Stanton, E.A. 2019. *Updated Massachusetts Battery Storage Measures: Benefits and Costs.* Applied Economics Clinic. Prepared for Clean Energy Group. [Online]

Applied Economics Clinic
Economic and Policy Analysis of Energy, Environment and Equity

Comings, T., B. Woods, E.A. Stanton, and E. Tavares. 2019. *Duke Energy Integrated Resource Plans in North Carolina.* Applied Economics Clinic. Prepared for Southern Environmental Law Center. [Online]

Stanton, E.A., B. Woods, A. Sommer, and C. Hotaling. 2019. *Evaluation of Northern Indiana Public Service Company's 2018 Integrated Resource Plan.* Applied Economics Clinic. Prepared for Citizens Action Coalition of Indiana. [Online]

Stanton, E.A., R. Lopez, and B. Woods. 2018. *Review of Proposed CAFE and CO_2 Standards.* Applied Economics Clinic. Prepared for California Attorney General Office and California Air Resources Board. [Online]

Stanton, E.A., R. Lopez, B. Woods, T. Stasio, and A. Sommer. 2018. *Report on Indiana's 2018 Draft Statewide Analysis of Future Resource Requirements of Electricity*. Applied Economics Clinic. Prepared for Citizens Action Coalition of Indiana. [Online]

Stanton, E.A. 2018. *Massachusetts Battery Storage Measures: Benefits and Costs.* Applied Economics Clinic. Prepared for Clean Energy Group. [Online]

Stanton, E.A. 2018. *Review of Massachusetts Efficiency Program Administrator's April 2018 Draft 2019-2021 Energy Efficiency Plan.* Applied Economics Clinic. Prepared for Conservation Law Foundation. [Online]

Stanton, E.A., and T. Comings. 2018. *Massachusetts Clean Energy Bill Provisions Boost Jobs.* Applied Economics Clinic. Prepared for Barr Foundation. [Online]

Stanton, E.A., T. Comings, R. Wilson, S. Alisalad, E.N Marzan, C. Schlegel, B. Woods, J. Gifford, E. Snook, and P. Yuen. 2018. *An Analysis of the Massachusetts 2018 'Act to Promote a Clean Energy Future' Report.* Applied Economics Clinic. Prepared for Barr Foundation. [Online]

Woods, B., C. Schlegel, and E.A. Stanton. 2018. *Massachusetts' Clean Energy Policy Overview.* Applied Economics Clinic. Prepared for Barr Foundation. [Online]

Comings, T., E.A. Stanton, and B. Woods. 2018. *The ABCs of Boston CCE*. Applied Economics Clinic. Prepared for Barr Foundation. [Online]

Stanton, E.A., E.N. Marzan, and S. Alisalad. 2018. *Accessing Energy Efficiency in Massachusetts.* Applied Economics Clinic. Prepared for Conservation Law Foundation. [Online]

Stanton, E.A., R. Wilson, and B. Woods. 2018. *Missed Opportunities for Energy Efficiency in Virginia*. Applied Economics Clinic. Prepared for the Consumers Union. [Online]

Stanton, E.A., T. Comings, and A. Sommer. 2018.*The Husker Energy Plan: A New Energy Plan for Nebraska*. Applied Economics Clinic. Prepared for the Nebraska Wildlife Foundation. [Online]

Stanton, E.A., A. Sommer, T. Comings, and R. Wilson. 2017. *Benefits of Long-Term Renewable Contracts for Pennsylvania*. Applied Economics Clinic. Prepared for Mid-Atlantic Renewable Energy Coalition (MAREC). [Online]

Applied Economics Clinic
Economic and Policy Analysis of Energy, Environment and Equity

Stanton, E.A., A. Sommer, T. Comings, and R. Wilson. 2017. *Pennsylvania Long-Term Renewables Contracts Benefits and Costs*. Applied Economics Clinic. Prepared for Mid-Atlantic Renewable Energy Coalition (MAREC). [Online]

Comings, T., E.A. Stanton, and B. Woods. 2017. *An Analysis of Community Choice Energy for Boston.* Applied Economics Clinic. Prepared for Barr Foundation. [Online]

Wilson, R., T. Comings, and E.A. Stanton. 2017. *Ratepayer Impacts of ConEd's 20-Year Shipping Agreement on the Mountain Valley Pipeline.* Applied Economics Clinic. Prepared for the Environmental Defense Fund. [Online]

Sommer, A. and E.A. Stanton. 2017. *Report on Vectren 2016* IRP. Applied Economics Clinic. Prepared on behalf of Earthjustice, Indiana Distributed Energy Alliance, Sierra Club, and Valley Watch. Submitted to the Indiana Utility Regulatory Commission. [Online]

Sommer, A. and E.A. Stanton. 2017. *Report on Indiana Power & Light 2016* IRP. Applied Economics Clinic. Prepared on behalf of Earthjustice, Indiana Distributed Energy Alliance, Sierra Club, and Valley Watch. Submitted to the Indiana Utility Regulatory Commission. [Online]

Sommer, A. and E.A. Stanton. 2017. *Report on Northern Indiana Public Service Company's 2016* IRP. Applied Economics Clinic. Prepared on behalf of Earthjustice, Indiana Distributed Energy Alliance, Sierra Club, and Valley Watch. Submitted to the Indiana Utility Regulatory Commission. [Online]

Stanton, E.A., P. Knight, P. Luckow, A. Allison, T. Vitolo, J. Barnes, B. Inskeep, and C. Barnes. 2016. *Envisioning Pennsylvania's Energy Future: Powering the Commonwealth's Energy Needs with 100 Percent Renewables by 2050.* Prepared by Synapse Energy Economics and EQ Research for Delaware Riverkeeper Network. [Online]

Wilson, R., S., Fields, P. Knight, E. McGee, W. Ong, N. Santen, T. Vitolo, and E.A. Stanton. 2016. *Are the Atlantic Coast Pipeline and the Mountain Valley Pipeline Necessary?* Prepared by Synapse Energy Economics for Southern Environmental Law Center and Appalachian Mountain Advocates. [Online]

Knight, P. and E.A. Stanton. 2016. *"Sorting Out New England's Pipeline Needs: A Round Up of Recent Studies and What They Mean".* Synapse Energy Economics White Paper. [Online]

Stanton, E.A., P. Knight, A. Allison, T. Comings, A. Horowitz, W. Ong, N. R. Santen, and K. Takahashi. 2016. *The RGGI Opportunity 2.0: RGGI as the Electric Sector Compliance Tool to Achieve 2030 State Climate Targets.* Prepared by Synapse Energy Economics for Sierra Club, Pace Energy and Climate Center, and Chesapeake Climate Action Network. [Online]

Jackson, S., P. Luckow, E.A. Stanton, A. Horowitz, P. Peterson, T. Comings, J. Daniel, and T. Vitolo. 2016. *Reimagining Brayton Point: A Guide to Assessing Reuse Options for the Somerset Community*. Prepared by Synapse Energy Economics for Coalition for Clean Air South Coast, Clean Water Action, and Toxics Action Center. [Online]

Applied Economics Clinic
Economic and Policy Analysis of Energy, Environment and Equity

Stanton, E. A., P. Knight, A. Allison, T. Comings, A. Horowitz, W. Ong, N. R. Santen, and K. Takahashi. 2016. *The RGGI Opportunity: RGGI as the Electric Sector Compliance Tool to Achieve 2030 State Climate Targets.* Prepared by Synapse Energy Economics for Sierra Club, Pace Energy and Climate Center, and Chesapeake Climate Action Network. [Online]

Luckow, P., E.A. Stanton, S. Fields, W. Ong, B. Biewald, S. Jackson, and J. Fisher. 2016. *Spring 2016 National Carbon Dioxide Price Forecast*. Synapse Energy Economics White Paper. [Online]

Knight, P., A. Allison, W. Ong, N. R. Santen, and E.A. Stanton. 2016. *Cutting Electric Bills with the Clean Power Plan.* Prepared by Synapse Energy Economics for The Energy Foundation. [Online]

Horowitz, A., S. Jackson, A. Allison, and E.A. Stanton. 2016. *Environmental Justice and the Clean Power Plan.* Prepared by Synapse Energy Economics for The Energy Foundation. [Online]

Jackson, S., N. R. Santen, P. Knight, S. Fields, B. Biewald, and E.A. Stanton. 2015. *Clean Power Plan Handbook: A Guide to the Final Rule for Consumer Advocates.* Prepared by Synapse Energy Economics for National Association of State Utility Consumer Advocates. [Online]

Wilson, R., T. Comings, and E.A. Stanton. 2015. *Analysis of the Tongue River Railroad Draft Environmental Impact Statement.* Prepared by Synapse Energy Economics for Sierra Club and Earthjustice. [Online]

Knight, P., S. Fields, S. Jackson, W. Ong, N. R. Santen, B. Biewald, and E.A. Stanton. 2015. *Multi-State Compliance with the Clean Power Plan in CP3T.* Prepared by Synapse Energy Economics for the National Association of State Utility Consumer Advocates. [Online]

Vitolo, T., P. Luckow, S. Fields, P. Knight, B. Biewald, and E.A. Stanton. 2015. *Lower Electric Costs in a Low- Emission Future.* Prepared by Synapse Energy Economics for The Energy Foundation. [Online]

Stanton, E. A., T. Comings, S. Jackson, and E. Karaca. 2015. *Atlantic Coast Pipeline Benefits Review.* Prepared by Synapse Energy Economics for Southern Environmental Law Center. [Online]

Wilson, R., M. Whited, S. Jackson, B. Biewald, and E.A. Stanton. 2015. *Best Practices in Planning for Clean Power Plan Compliance.* Prepared by Synapse Energy Economics for the National Association of State Utility Consumer Advocates. [Online]

Fields, S., S. Jackson, P. Knight, and E.A. Stanton. 2015. *Internal briefing on Clean Power Plan compliance in Ohio.* Prepared by Synapse Energy Economics for Office of the Ohio Consumers' Counsel.

Luckow, P., E.A. Stanton, S. Fields, B. Biewald, S. Jackson, J. Fisher, and R. Wilson. 2015. *2015 Carbon Dioxide Price Forecast.* Synapse Energy Economics White Paper. [Online]

Knight, P., A. Allison, E.A. Stanton. 2015. *Preliminary Clean Power Plan Analysis for Kentucky.* Prepared by Synapse Energy Economics for Kentuckians for the Commonwealth.

Applied Economics Clinic
Economic and Policy Analysis of Energy, Environment and Equity

Stanton, E. A., P. Knight, J. Daniel, B. Fagan, D. Hurley, J. Kallay, E. Karaca, G. Keith, E. Malone, W. Ong, P. Peterson, L. Silvestrini, K. Takahashi, and R. Wilson. 2015. *Massachusetts Low Gas Demand Analysis: Final Report.* Prepared by Synapse Energy Economics for the Massachusetts Department of Energy Resources. [Online]

Fields, S., E.A. Stanton, P. Knight, B. Biewald, J. Daniel, S. Jackson, E. Karaca, J. Rosenkranz, and K. Takahashi. 2014. *Calculating Alabama's 111(d) Target*. Prepared by Synapse Energy Economics for the Southern Environmental Law Center. [Online]

Fields, S., E.A. Stanton, P. Knight, B. Biewald, J. Daniel, S. Jackson, E. Karaca, J. Rosenkranz, and K. Takahashi. 2014. *Calculating Georgia's 111(d) Target*. Prepared by Synapse Energy Economics for the Southern Environmental Law Center. [Online]

Fields, S., E.A. Stanton, P. Knight, B. Biewald, J. Daniel, S. Jackson, E. Karaca, J. Rosenkranz, and K. Takahashi. 2014. *Alternate Scenarios for 111(d) Implementation in North Carolina*. Prepared by Synapse Energy Economics for the Southern Environmental Law Center. [Online]

Stanton, E. A., S. Jackson, B. Biewald, and M. Whited. 2014. *Final Report: Implications of EPA's Proposed "Clean Power Plan."* Prepared by Synapse Energy Economics for the National Association of State Utility Consumer Advocates. [Online]

Stanton, E. A., J. Daniel, T. Vitolo, P. Knight, D. White, and G. Keith. 2014. *Net Metering in Mississippi: Costs, Benefits, and Policy Considerations.* Prepared by Synapse Energy Economics for the Public Service Commission of Mississippi. [Online]

Knight, P., E.A. Stanton, B. Biewald, J. Daniels, S. Fields, S. Jackson, A. Napoleon, J. Rosenkranz, and K. Takahashi. 2014. *Internal briefing on Clean Power Plan implementation in Virginia.* Prepared by Synapse Energy Economics for Sierra Club.

Jackson, S. and E.A. Stanton. 2014. *Internal briefing on Clean Power Plan implementation in Minnesota.* Prepared by Synapse Energy Economics for Sierra Club.

Knight, P., E.A. Stanton, B. Biewald, J. Daniels, S. Fields, S. Jackson, A. Napoleon, J. Rosenkranz, and K. Takahashi. 2014. *Internal briefing on Clean Power Plan implementation in Florida*. Prepared by Synapse Energy Economics for Sierra Club.

E.A. Stanton, S. Jackson, B. Biewald, M. Chang, J. Daniels, S. Fields, P. Knight, A. Napoleon, M. Whited, and K. Takahashi. 2014. *Internal briefing on Clean Power Plan implementation in Arizona, Montana, Nevada, and Utah.* Prepared by Synapse Energy Economics for Sierra Club.

E.A. Stanton, S. Jackson, B. Biewald, M. Chang, J. Daniels, S. Fields, P. Knight, A. Napoleon, and K. Takahashi. 2014. *Internal briefing on Clean Power Plan implementation Illinois.* Prepared by Synapse Energy Economics for Sierra Club.

Luckow, P., E.A. Stanton, B. Biewald, S. Fields, S. Jackson, J. Fisher, and F. Ackerman. 2014. *CO_2 Price Report, Spring 2014: Includes 2013 CO_2 Price Forecast.* Synapse Energy Economics White Paper. [Online]

Applied Economics Clinic
Economic and Policy Analysis of Energy, Environment and Equity

Fisher, J., P. Knight, E.A. Stanton, and B. Biewald. 2014. *Avoided Emissions and Generation Tool (AVERT): User Manual*. *Version 1.0*. Prepared by Synapse Energy Economics for the U.S. Environmental Protection Agency. [Online]

Stanton, E. A., M. Whited, and F. Ackerman. 2014. *Estimating the Cost of Saved Energy in Utility Efficiency Programs.* Prepared by Synapse Energy Economics for the U.S. Environmental Protection Agency.

Stanton, E. A., F. Ackerman, and J. Daniel. 2013. *Comments on the 2013 Technical Update of the Social Cost of Carbon*. Prepared by Synapse Energy Economics for the Environment, Economics and Society Institute. [Online]

Luckow, P., E.A. Stanton, B. Biewald, J. Fisher, F. Ackerman, and E. Hausman. 2013. *2013 Carbon Dioxide Price Forecast.* Synapse Energy Economics White Paper. [Online]

Stanton, E. A., S. Jackson, G. Keith, E. Malone, D. White, and T. Woolf. 2013. *A Clean Energy Standard for Massachusetts.* Prepared by Synapse Energy Economics for the Massachusetts Clean Energy Center and the Massachusetts Departments of Energy Resources, Environmental Protection, and Public Utilities. [Online]

Knight, P., E.A. Stanton, J. Fisher, and B. Biewald. 2013. *Forecasting Coal Unit Competitiveness: Coal Retirement Assessment Using Synapse's Coal Asset Valuation Tool (CAVT).* Prepared by Synapse Energy Economics for Energy Foundation. [Online]

Hornby, R., P. Chernick, D. White, J. Rosenkranz, R. Denhardt, E. Stanton, J. Glifford, B. Grace, M. Chang, P. Luckow, T. Vitolo, P. Knight, B. Griffiths, and B. Biewald. 2013. *Avoided Energy Supply Costs in New England: 2013 Report.* Prepared by Synapse Energy Economics for the Avoided-Energy-Supply-Component (AESC) Study Group. [Online]

Stanton, E. A., T. Comings, K. Takahashi, P. Knight, T. Vitolo, and E. Hausman. 2013. *Economic Impacts of the NRDC Carbon Standard.* Prepared by Synapse Energy Economics for the Natural Resources Defense Council. [Online]

Stanton, E.A. 2013. Background research, consulting and support related to the Danish Energy Agency, Organisation for Economic Co-operation, and the UNEP Riso Centre's "*National Greenhouse Gas Emissions Baseline Scenarios: Learning from Experiences in Developing Countries."* [Online]

Whited, M., D. White, S. Jackson, P. Knight, and E.A. Stanton. 2013. *Declining Markets for Montana Coal*. Prepared by Synapse Energy Economics for Northern Plains Resource Council. [Online]

Stanton, E. A. and F. Ackerman. 2013. *Climate Impacts on Agriculture: A Challenge to Complacency?* Global Development and Environment Institute Working Paper 13-01. [Online]

Stanton, E. A., F. Ackerman, T. Comings, P. Knight, T. Vitolo, and E. Hausman. 2013. *Will LNG Exports Benefit the United States Economy?* Prepared by Synapse Energy Economics for the Sierra Club. [Online]

Applied Economics Clinic
Economic and Policy Analysis of Energy, Environment and Equity

Ackerman, F., T. Vitolo, E. Stanton, and G. Keith. 2013. *Not-so-smart ALEC: Inside the attacks on renewable energy*. Prepared by Synapse Energy Economics for the Civil Society Institute. [Online]

Ackerman, F., E.A. Stanton, and R. Bueno. 2012. *Climate Policy and Development: An Economic Analysis.* Economics for Equity and the Environment (E3 Network) Working Paper. [Online]

Stanton, E. A. and M. Taylor. 2012. *A Good Environment for Jobs.* Economics for Equity and the Environment (E3 Network) Working Paper. [Online]

Stanton, E. A., F. Ackerman, and R. Bueno. 2012. *Reason, Empathy, and Fair Play: The Climate Policy Gap.* UNDESA Working Paper No.113. [Online]

Erickson, P., M. Lazarus, E.A. Stanton, C. Chandler, R. Bueno, F. Ackerman, C. Munitz, and J. Cegan. 2012. *Greenhouse Gas Emissions in King County: An Updated Geographic-plus Inventory, a Consumption-based Inventory, and an Ongoing Tracking Framework.* Prepared by Stockholm Environment Institute-U.S. Center for King County, Washington. [Online]

Stanton, E. A., J. Cegan, R. Bueno, and F. Ackerman. 2012. *Estimating Regions' Relative Vulnerability to Climate Damages in the CRED Model*. Stockholm Environment Institute-U.S. Center Working Paper WP-US-1103. [Online]

Stanton, E.A. 2012. *Development without Carbon as Climate Policy.* Economics for Equity and the Environment (E3 Network) Working Paper. [Online]

Ackerman, F., E.A. Stanton, and R. Bueno. 2012. *Epstein-Zin utility in DICE: Is risk aversion irrelevant to climate policy?* Economics for Equity and the Environment (E3 Network) Working Paper. [Online]

Stanton, E. A., R. Bueno, J. Cegan, and C. Munitz. 2011. *King County Community Greenhouse Gas Emissions Inventory – Consumption Methodology: Technical Report.* Prepared by Stockholm Environment Institute-U.S. Center for King County, Washington. [Online]

Stanton, E. A., R. Bueno, and M. Davis. 2011. *Real People, Real Impacts: The Climate Impact Equity Lens.* Stockholm Environment Institute-U.S. Center Report. [Online]

Stanton, E. A. and R. Bueno. 2011. *The CIEL Backgrounder: Understanding the Climate Impact Equity Lens.* Stockholm Environment Institute-U.S. Center Report. [Online]

Stanton E.A. 2011. *Development without Carbon: Climate and the Global Economy through the 21st Century.* Stockholm Environment Institute-U.S. Center Report. [Online]

Erickson, P., M. Lazarus, E.A. Stanton, and F. Ackerman. 2011. *Consumption-Based Greenhouse Gas Emissions Inventory for Oregon – 2005: Summary Report.* Prepared by Stockholm Environment Institute-U.S. Center for the State of Oregon Department of Environmental Quality. [Online]

Applied Economics Clinic
Economic and Policy Analysis of Energy, Environment and Equity

Stanton, E.A., R. Bueno, F. Ackerman, P. Erickson, R. Hammerschlag, and J. Cegan. 2011. *Consumption-Based Greenhouse Gas Emissions Inventory for Oregon – 2005: Technical Report.* Prepared by Stockholm Environment Institute-U.S. Center for the State of Oregon Department of Environmental Quality. [Online]

Ackerman, F. and E.A. Stanton. 2011. *The Social Cost of Carbon.* Economics for Equity and the Environment (E3 Network) White Paper. [Online]

Stanton, E.A., R. Bueno, J. Cegan, and C. Munitz. 2011. *Consumption-Based Emissions Inventory for San Francisco: Technical Report.* Prepared by Stockholm Environment Institute-U.S. Center for the City of San Francisco, California. [Online]

Stanton, E. A. and F. Ackerman. 2011. *Developing Baselines for Climate Policy Analysis.* Prepared by Stockholm Environment Institute-U.S. Center as additional guidance for *"United Nations Environmental Programme (UNEP) MCA4climate Initiative: A practical framework for planning pro-development climate policies."* [Online]

Ackerman, F. and E.A. Stanton. 2011. *A practical framework for planning pro- development climate policies*. Prepared by Stockholm Environment Institute-U.S. Center as additional guidance for *"United Nations Environmental Programme (UNEP) MCA4climate Initiative: A practical framework for planning pro-development climate policies."* [Online]

Ackerman, F. and E.A. Stanton. 2011. *The Last Drop: Climate Change and the Southwest Water Crisis*. Stockholm Environment Institute-U.S. Center Report funded by the Kresge Foundation. [Online]

Stanton, E. A. and E. Fitzgerald. 2011. *California Water Supply and Demand: Technical Report*. Stockholm Environment Institute-U.S. Center Report funded by the Kresge Foundation. [Online]

Bueno, R. and E.A. Stanton. 2011. *Casting DICE for 350 ppm.* Stockholm Environment Institute-U.S. Center Working Paper WPUS-1101. [Online]

Stanton, E. A. and F. Ackerman. 2010. *Emission Reduction, Interstate Equity, and the Price of Carbon*. Prepared by Stockholm Environment Institute-U.S. Center Economics for Equity and the Environment (E3 Network). [Online]

Stanton, E. A. and F. Ackerman. 2010. *No State Left Behind: A Better Approach to Climate Policy*. Economics for Equity and the Environment (E3 Network) White Paper. [Online]

Ackerman, F., E.A. Stanton, and R. Bueno. 2010. *CRED: A New Model of Climate and Development.* United Nations Department of Economic and Social Affairs Working Paper No.96. [Online]

Stanton, E. A., M. Davis, and A. Fencl. 2010. *Costing Climate Impacts and Adaptation: A Canadian Study on Coastal Zones*. Prepared by Stockholm Environment Institute-U.S. Center for the National Round Table on the Environment and the Economy Economic Risks and Opportunities of Climate Change Program. [Online]

Applied Economics Clinic
Economic and Policy Analysis of Energy, Environment and Equity

Ackerman, F. and E.A. Stanton. 2010. *The socio-economic implications of climate change on FYR Macedonia and national policy options on adaptation.* United Nations Development Programme (UNDP) Report.

Ackerman, F., E.A. Stanton, S. DeCanio, E. Goodstein, R. Howarth, R. Norgaard, C. Norman, and K. Sheeran. 2009. *The Economics of 350: The Benefits and Costs of Climate Stabilization*. Economics for Equity and the Environment (E3 Network), Stockholm Environment Institute-U.S. Center, and Ecotrust Report. [Online]

Stanton, E. A., F. Ackerman, and K. Sheeran. 2009. *Understanding Interstate Differences in U.S. Greenhouse Gas Emissions*. Stockholm Environment Institute-U.S. Center Working Paper WP-US-1004. [Online]

Stanton, E. A., F. Ackerman, and K. Sheeran. 2009. *Greenhouse Gases and the American Lifestyle: Understanding Interstate Differences in Emissions*. Economics for Equity and the Environment (E3 Network), and Ecotrust Report. [Online]

Stanton, E. A., F. Ackerman, and F. Resende. 2009. *The Socio-Economic Impact of Climate Change in Armenia*. Stockholm Environment Institute-U.S. Center for the United Nations Development Programme (UNDP). [Online]

Stanton, E. A. and F. Ackerman. 2008. *Generated User Benefits and the Heathrow Expansion: Understanding Consumer Surplus*. Prepared by Stockholm Environment Institute-U.S. Center for Friends of the Earth England, Wales and Northern Ireland. [Online]

Stanton, E. A. and F. Ackerman. 2008. *Out of the Shadows: What's Behind DEFRA's New Approach to the Price of Carbon*. Prepared by Stockholm Environment Institute-U.S. Center for Friends of the Earth England, Wales and Northern Ireland. [Online]

Bueno, R., C. Herzfeld, E.A. Stanton, and F. Ackerman. 2008. *The Caribbean and Climate Change: The Costs of Inaction*. Prepared by Stockholm Environment Institute-U.S. Center for Environmental Defense Fund. [Online]

Ackerman, F. and E.A. Stanton. 2008. *The Cost of Climate Change: What We'll Pay if Global Warming Continues Unchecked*. Prepared by Stockholm Environment Institute-U.S. Center for Natural Resources Defense Council. [Online]

Stanton, E.A. 2008. Literature review of water resources infrastructure and related environmental costs and benefits for "*Default Case Study Values and Management Options for WEAP in Massachusetts."* Prepared by Stockholm Environment Institute-U.S. Center for Keep Water Local, a project of the Massachusetts Riverways Program, Commonwealth of Massachusetts.

Stanton, E.A. and F. Ackerman. 2007. *Florida and Climate Change: The Costs of Inaction*. Prepared by Global Development and Environmental Institute – Tufts University for Environmental Defense. [Online]

Applied Economics Clinic
Economic and Policy Analysis of Energy, Environment and Equity

Stanton, E.A. 2007. *United States-Specific Human Development Index: Methodology and Data*. Report commissioned by American Human Development Report Project, as a technical background paper to *The Measure of America: American Human Development Report 2008-2009*.

Ackerman, F. and E.A. Stanton. 2006. *Climate Change – the Costs of Inaction.* Prepared by Global Development and Environmental Institute – Tufts University for Friends of the Earth England, Wales and Northern Ireland. [Online]

Ackerman, F. and E.A. Stanton. 2006. *Implications of REACH for the Developing Countries*. Global Development and Environmental Institute – Tufts University for European Parliament, Directorate- General for External Policies of the Union. [Online]

TESTIMONY AND EXPERT COMMENTS

Stanton, E.A. 2020. *Surrebuttal Testimony on Pennsylvania's Duquesne Light Default Service Plan*. Applied Economics Clinic. Prepared for MAREC Action. [Online]

Stanton, E.A. 2020. *Testimony on Pennsylvania's Duquesne Light Default Service Plan*. Applied Economics Clinic. Prepared for MAREC Action. [Online]

Stanton, E.A. 2020. *Comments on AltaGas Climate Business Plan*
Applied Economics Clinic. Prepared for DC Office of the People's Counsel. [Online]

Stanton, E.A., B. Woods, and E. Tavares. 2020. *Comments on Massachusetts Decarbonization Roadmap*. Applied Economics Clinic. Prepared for Conservation Law Foundation. [Online]

Stanton, E.A., 2020. *Testimony on Algonquin Gas Transport Agreement*. Testimony to Massachusetts' Department of Public Utilities on behalf of the Town of Weymouth, Docket No. 19-132. [Online]

Stanton, E.A., B. Woods, and E. Tavares. 2020. *Comments on Massachusetts Decarbonization Roadmap*. Applied Economics Clinic. Prepared for Conservation Law Foundation. [Online]

Stanton, E.A. 2019. Testimony on Puerto Rico Electric Power Authority (PREPA) Least Cost Integrated Resource Plan. Testimony to Puerto Rico Energy Bureau on behalf of Environmental Defense Fund, Docket No. 2018-0001. [Online]

Stanton, E.A. 2019. *Testimony on New Hampshire's Liberty Gas Supply Planning*. Testimony to the New Hampshire Public Utilities Commission on behalf of Conservation Law Foundation, Docket No.17-189. [Online]

Stanton, E.A. 2019. *Testimony on New Hampshire's Liberty Gas Supply Planning*. Testimony to the New Hampshire Public Utilities Commission on behalf of Conservation Law Foundation, Docket No. 17-152. [Online]

Stanton, E.A. 2019. *Comment on Transco's Assessment of Net Greenhouse Gas Emissions from NYC's Proposed NESE Pipeline*. Testimony to the New York State Department of Environmental

Applied Economics Clinic
Economic and Policy Analysis of Energy, Environment and Equity

Conservation on behalf of Natural Resources Defense Council, ID No. 2-9902-00109/00006 WQC. [Online]

Stanton, E.A. 2019. *Testimony on NISPCO's Petition for Approval of Roaming Bison Wind Farm PPA.* Applied Economics Clinic. Prepared for Citizens Action Coalition of Indiana. [Online]

Stanton, E.A. 2019. *Testimony on NIPSCO's Petition for Approval of Jordan Creek Wind Farm PPA.* Applied Economics Clinic. Prepared for Citizens Action Coalition of Indiana. [Online]

Stanton, E.A. 2019. *Testimony in NIPSCO's 2019 Rate Case.* Applied Economics Clinic. Prepared for Citizens Action Coalition of Indiana. [Online]
Stanton, E.A. and R. Lopez. 2019. *Comment on National Grid's Proposed Off-Peak Charging Rebate*. Testimony to the Massachusetts Department of Public Utilities on behalf of Green Energy Consumers Alliance, Docket No. 18-150. [Online]

Comings, T., E.A. Stanton, and E. Tavares. 2019. *Comments on Xcel Energy Minnesota's 2018 Mankato Proposal.* Applied Economics Clinic. Prepared for Sierra Club. [Online]

Stanton, E.A. 2018. *Testimony Regarding the Joint Statewide Three-Year Energy Efficiency Plan for Massachusetts, 2019-2021.* Applied Economics Clinic. Prepared for Conservation Law Foundation. [Online]

Stanton, E.A. 2018. *Massachusetts Comprehensive Energy Plan: Comments on Stakeholder Meeting Presentation.* Applied Economics Clinic. Prepared for Conservation Law Foundation. [Online]

Stanton, E.A. 2018. *Minnesota Power EnergyForward Testimony*. Testimony to the Minnesota Public Utilities Commission on behalf of Minnesota Center for Environmental Advocacy and Fresh Energy, PUC Docket No. E-015/GR-17-568. [Online]

Stanton, E.A. 2018. *Testimony Regarding the Joint Statewide Three-Year Energy Efficiency Plan for Massachusetts, 2019-2021.* Testimony to the Commonwealth of Massachusetts Department of Public Utilities on behalf of Conservation Law Foundation, D.P.U. 18-110 – D.P.U. 18-119. [Online]

Stanton, E.A. 2018. *Comment on August 2018 Analysis of the Avoided Costs of Compliance of the MA GWSA*. Applied Economics Clinic. [Online]

Stanton, E.A. 2018. *Testimony Regarding Consistency of Petition with [Eversource] Portfolio Objectives, Adequacy of Alternatives Considered, and Consistency with State Environmental Policies.* Testimony to the Commonwealth of Massachusetts Department of Public Utilities on behalf of the Conservation Law Foundation, Docket No. DPU 17-175. [Online]

Stanton, E.A. 2018. *Testimony Regarding Consistency of Petition with [National Grid] Portfolio Objectives, Adequacy of Alternatives Considered, and Consistency with State Environmental Policies.* Testimony to the Commonwealth of Massachusetts Department of Public Utilities on behalf of the Conservation Law Foundation, Docket No. DPU 17-174. [Online]

Applied Economics Clinic
Economic and Policy Analysis of Energy, Environment and Equity

Stanton, E.A. 2018. *Testimony Regarding Consistency of Petition with [Columbia Gas] Portfolio Objectives, Adequacy of Alternatives Considered, and Consistency with State Environmental Policies.* Testimony to the Commonwealth of Massachusetts Department of Public Utilities on behalf of the Conservation Law Foundation, Docket No. DPU 17-172. [Online]

Stanton, E.A. 2018. *Testimony Regarding Consistency of Petition with [Berkshire Gas] Portfolio Objectives, Adequacy of Alternatives Considered, and Consistency with State Environmental Policies.* Testimony to the Commonwealth of Massachusetts Department of Public Utilities on behalf of the Conservation Law Foundation, Docket No. DPU 17-145. [Online]

Stanton, E.A. 2017. *Testimony on Entergy New Orleans' Request to Construct New Orleans Power Station.* Testimony to the Council for the City of New Orleans on behalf of Alliance for Affordable Energy, Deep South for Environmental Justice, 350 Louisiana- New Orleans, and the Sierra Club, Docket No. UD-16-02. [Online]

Stanton, E.A. 2017. *Testimony Regarding Natural Gas Price Hedging in Florida.* Testimony to the Florida Public Service Commission on behalf of the Sierra Club, Docket No. 20170057-EI. [Online]

Stanton, E.A. 2017. *Testimony Regarding the Petition of Vectren for Approval of Its Proposed Demand Side Management and Energy Efficiency Programs for 2016-2018.* Testimony to the Indiana Utility Regulatory Commission on behalf of Citizens Action Coalition of Indiana, Cause No.44927 DSM-4. [Online]

Stanton, E.A. 2017. *Testimony Regarding Brockton Power Co., LLC.* Testimony to the Commonwealth of Massachusetts Department of Environmental Protection Office of Appeals and Dispute Resolution on behalf of the Residents of Brockton, West Bridgewater, and East Bridgewater, OADR Docket No. 2011-025 & 026. [Online]

Stanton, E.A. 2017. *Declaration in the matter of Clean Water Action, et al. v. E. Scott Pruitt, regarding the U. S. EPA's Steam Electric Effluent Limitation Guidelines*. Declaration prepared on behalf of Earthjustice and Environmental Integrity.

Stanton, E.A. 2017. *Testimony Regarding Northern Indiana Public Service Company's CPCN for Environmental Compliance Projects.* Testimony to the Indiana Utility Regulatory Commission on behalf of Citizens Action Coalition of Indiana, Cause No.448872.

Stanton, E.A. 2017. *Testimony Regarding the Petition of Duke Energy Indiana, Inc. for Approval of Its Proposed Demand Side Management and Energy Efficiency Programs for 2016-2018.* Testimony to the Indiana Utility Regulatory Commission on behalf of Citizens Action Coalition of Indiana, Cause No.43955 DSM-4. [Online]

Stanton, E.A. 2017. *Expert Comments Regarding Massachusetts' Department of Environmental Protection's Rulemaking Required by Section 3(d) of the Global Warming Solutions Act.* Expert comments submitted by Conservation Law Foundation. [Online]

Stanton, E.A. 2016. *Testimony Regarding the National Grid Analysis of Economic Benefits of Proposed Access Northeast Gas Pipeline.* Testimony to the Massachusetts Department of Public Utilities on behalf of Conservation Law Foundation, Docket No. 16-05. [Online]

Applied Economics Clinic
Economic and Policy Analysis of Energy, Environment and Equity

Stanton, E.A. 2016. *Testimony Regarding the Eversource Analysis of Economic Benefits of Proposed Access Northeast Gas Pipeline.* Testimony to the Massachusetts Department of Public Utilities on behalf of Conservation Law Foundation, Docket No. 15-181. [Online]

Stanton, E.A. 2016. *Testimony on Byron Fleet Benefits.* Testimony to the Illinois Property Tax Appeal Board on behalf of Whitt Law, Docket Nos. 12-01248 and 12-02297.

Stanton, E.A., P. Knight, F. Ackerman, and N. R. Santen. 2015. *Byron Fleet Benefit Rebuttal.* Expert comments submitted by Whitt Law to the Illinois Property Tax Appeal Board, Docket Nos. 12-01248 and 12-02297.

Nogee, A., M. Chang, P. Knight, and E.A. Stanton. 2015. *Electricity Market Restructuring and the Nuclear Industry*. Expert comments submitted by Whitt Law testimony regarding Byron Station to the Illinois Property Tax Appeal Board, Docket Nos. 12-01248 and 12-02297.

Stanton, E.A. 2015. *Testimony on the Economic Analyses of a Proposed Brockton Power Company Generating Facility*. Testimony before the Massachusetts Department of Environmental Protection on behalf of Alternatives for Community & Environment, Docket No. 2011-025 & 026. [Online]

Stanton, E.A. and P. Knight. 2015. *Testimony in Opposition to HB 208 Repealing the New Hampshire Regional Greenhouse Gas Initiative*. Testimony to the Science, Technology and Energy Committee on behalf of New Hampshire's Office of Consumer Advocate. [Online]

Stanton, E.A. 2014. *Testimony Regarding the Cost of Compliance with the Global Warming Solutions Act*. Testimony to the Commonwealth of Massachusetts Department of Public Utilities on behalf of the Massachusetts Department of Energy Resources and the Department of Environmental Protection, Docket No. DPU 14-86. [Online]

Stanton E.A., F. Ackerman, and J. Daniel. 2014. *Comments on the 2013 Technical Update of the Social Cost of Carbon*. Submitted to the U.S. Office of Management and Budget as part of Environment, Economics, and Society Institute comments, Docket No. OMB-2013-0007. [Online]

Stanton, E.A. 2013. *Testimony Regarding the Prudency of Public Service of New Hampshire's Scrubber Project at Merrimack Station.* Testimony on behalf of the Conservation Law Foundation. Testimony to the New Hampshire Public Utilities Commission, Docket No. DE 11-250. [Online]

Stanton E.A., J. Daniel, F. Ackerman, and S. Jackson. 2013. *Review of EPA's June 2013 Steam Electric Effluent Limitations and Guidelines (40 CFR Part 423).* Submitted as part of Earthjustice/Sierra Club/Environmental Integrity Project testimony, Docket No. EPA-HQ-OW-2009-0819. [Online]

Stanton, E.A., P. Knight, and F. Ackerman. 2013. *LaSalle Fleet Benefit Rebuttal.* Expert comments submitted by Whitt Law to the Illinois Property Tax Appeal Board, Dockets No. 09-04906.001-I-3, 09-04906.002-I-310-03549.001, 10-03549.002, 12-00643.001, 12-00643.002, 12-00643.003.

Applied Economics Clinic
Economic and Policy Analysis of Energy, Environment and Equity

Nogee A., M. Chang, P. Knight, and E.A. Stanton. 2013. *Electricity Market Restructuring and the Nuclear Industry.* Expert comments submitted by Whitt Law testimony regarding LaSalle Station to the Illinois Property Tax Appeal Board, Dockets No. 09-04906.001-I-3, 09-04906.002-I-310-03549.001, 10-03549.002, 12-00643.001, 12-00643.002, 12-00643.003.

Stanton, E.A. 2013. *Testimony Regarding Vermont Gas System's Petition for Authorization to Construct New Natural Gas Transmission Pipeline*. Testimony on behalf of the Conservation Law Foundation to the State of Vermont Public Service Board, Docket No. 7970. [Online]

Ackerman, F., and E.A. Stanton. 2011. *Regulation of Cooling Water Intake Structures at Existing Facilities.* Comments submitted to the U.S. Environmental Protection Agency, Docket ID EPA-HQ-OW-2008-0667. [Online]

Ackerman, F. and E.A. Stanton. 2010. *Testimony on EPA's 'Coal Combustion Residuals: Proposed Rule'.* Comment submitted as part of Earthjustice/Environmental Integrity Project testimony, Docket ID EPA-HQ-RCRA- 2009-6040. [Online]

JOURNAL ARTICLES

Stanton, E. A. 2019. "Kitchen Tables, Board Rooms and Other Potentially Disruptive Locales: The Role of Consumer Action in Carbon Emission Reduction." *Western New England Law Review*, 41(3), 553-562.

Luckow, P., J. Daniel, S. Fields, E.A. Stanton, and B. Biewald. 2014. "CO_2 Price Forecast: Planning for Future Environmental Regulations." *EM Magazine*, *June 2014*, 57-59. [Online]

Stanton, E.A. 2014. "What Carbon Costs Us." *Economists for Peace & Security Quarterly* 27 (4), 7-8. [Online]

Ackerman, F., E.A. Stanton, and R. Bueno. 2013. "Epstein-Zin utility in DICE: Is risk aversion irrelevant to climate policy?" *Environmental and Resource Economics* 56 (1), 73-84. [Online]

Stanton, E.A. 2012. "Modeling Pessimism: Does Climate Stabilization Require a Failure of Development?" *Environmental Development* 3, 65-76. [Online]

Stanton, E.A. 2012. "The Tragedy of Maldistribution: Climate, Sustainability, and Equity." *Sustainability* 4 (3): 394-411. [Online]

Erickson, P., D. Allaway, M. Lazarus, and E.A. Stanton. 2012. "A Consumption-Based GHG Inventory for the U.S. State of Oregon." *Environmental Science & Technology* 46 (7),3679-3686. [Online]

Ackerman, F., E.A. Stanton, and R. Bueno. 2011. "CRED: A new model of climate and development." *Ecological Economics* 85, 166-176. [Online]

Ackerman, F. and E.A. Stanton. 2012. "Climate Risks and Carbon Prices: Revising the Social Cost of Carbon." *Economics: The Open-Access, Open-Assessment E-Journal* 6 (2012-10), 1-25. [Online]

Applied Economics Clinic
Economic and Policy Analysis of Energy, Environment and Equity

Ackerman, F., E.A. Stanton, S. DeCanio, E. Goodstein, R. Howarth, R. Norgaard, C. Norman, and K. Sheeran. 2010. "The Economics of 350." *Solutions* 1 (5),49-56. [Online]

Ackerman, F., E.A. Stanton, and R. Bueno. 2010. "Fat Tails, Exponents, Extreme Uncertainty: Simulating Catastrophe in DICE." *Ecological Economics* 69 (8), 1657-1665. [Online]

Stanton, E.A. and F. Ackerman. 2009. "Climate and development economics: Balancing science, politics and equity." *Natural Resources Forum* 33 (4), 262-273. [Online]

Stanton, E.A., F. Ackerman, and S. Kartha. 2009. "Inside the Integrated Assessment Models: Four Issues in Climate Economics." *Climate and Development* 1 (2), 166-184. [Online]

Stanton, E.A. 2009. "Negishi welfare weights in integrated assessment models: The mathematics of global inequality." *Climatic Change* 107 (3), 417-432. [Online]

Ackerman, F., E.A. Stanton, C. Hope, and S. Alberth. 2009. "Did the Stern Review Underestimate U.S. and Global Climate Damages?" *Energy Policy* 37 (7), 2717-2721. [Online]

Ackerman, F. and E.A. Stanton. 2008. "Can Climate Change Save Lives? A comment on 'Economy-wide estimates of the implications of climate change: Human health'". *Ecological Economics* 66 (1), 8-13. (Previous edition appeared as Global Development and Environment Institute Working Paper No.06-05.) [Online]

Ackerman, F., E.A. Stanton, B. Roach, and A. S. Andersson. 2008. "Implications of REACH for Developing Countries." *European Environment* 18 (1): 16-29. [Online]

Ackerman, F., E.A. Stanton, and R. Massey. 2007. "European Chemical Policy and the United States: The Impacts of REACH." *Renewable Resources Journal* 25 (1). (Previously published as Global Development and Environment Institute Working Paper No.06-06.) [Online]

BOOKS AND BOOK CHAPTERS

Ackerman, F. and E.A. Stanton. 2015. "Climate Impacts on Agriculture: A Challenge to Complacency?". *The Oxford Handbook of the Macroeconomic of Global Warming,* eds. Bernard, L. and W. Semmler. New York: Oxford University Press. (Previous edition appeared as Global Development and Environment Institute Working Paper No.13-01.) [Online]

Ackerman, F. and E.A. Stanton. 2014. *Climate and Global Equity*. London: Anthem Press.

Ackerman, F. and E.A. Stanton. 2013. *Climate Economics: The State of the Art (Routledge Studies in Ecological Economics)*. Oxford: Routledge.

Stanton, E.A. 2011. "Greenhouse Gases and Human Well-Being: China in a Global Perspective." *The Economics of Climate Change in China: Towards and Low-Carbon Economy* eds. Gang, F., N. Stern, O. Edenhofer, X. Shanda, K. Eklund, F. Ackerman, L. Lailai, K. Hallding. London: Earthscan. (Previous version appeared as Stockholm Environment Institute-U.S. Center Working Paper WP-US-0907.) [Online]

Applied Economics Clinic
Economic and Policy Analysis of Energy, Environment and Equity

Boyce, J. K., E.A. Stanton, and S. Narain, eds. 2007. *Reclaiming Nature: Worldwide Strategies for Building Natural Assets*. London: Anthem Press.

Boyce, J. K., E.A. Stanton, and S. Narain. 2007. "Land Reform and Sustainable Development." *Reclaiming Nature: Worldwide Strategies for Building Natural Assets,* eds. Boyce, J. K., E.A. Stanton, and S. Narain. London: Anthem Press.

Stanton, E.A. 2007. "Inequality and the Human Development Index." PhD dissertation, University of Massachusetts-Amherst, 2007. [Online]

Stanton, E.A. and J. K. Boyce. 2005. *Environment for the People*. Political Economy Research Institute: Amherst, MA.

TEACHING EXPERIENCE

University of Massachusetts-Amherst, Amherst, MA

Adjunct Professor, Department of Economics, 2003 – 2006, 2020

Tufts University, Medford, MA

Adjunct Professor, Department of Urban Environmental Policy and Planning, 2007, 2017, 2018

College of New Rochelle, New Rochelle, NY

Assistant Professor, Department of Social Sciences, 2007 – 2008

Fitchburg State College, Fitchburg, MA

Adjunct Professor, Social Sciences Department, 2006

Castleton State College and the Southeast Vermont Community Learning Collaborative, Dummerston, VT

Adjunct Professor, 2005

School for International Training, Brattleboro, VT

Adjunct Professor, Program in Intercultural Management, Leadership, and Service, 2004

Resume dated October 2020

Curriculum Vitae.

Richard B. Kuprewicz

8151 164th Ave NE
Redmond, WA 98052

Tel: 425-802-1200 (Office)
E-mail: kuprewicz@comcast.net

Profile:

As president of Accufacts Inc., I specialize in gas and liquid pipeline investigation, auditing, risk management, siting, construction, design, operation, maintenance, training, SCADA, leak detection, management review, emergency response, and regulatory development and compliance. I have consulted for various local, state and federal agencies, NGOs, the public, and pipeline industry members on pipeline regulation, operation and design, with particular emphasis on operation in unusually sensitive areas of high population density or environmental sensitivity.

Employment:

Accufacts Inc. **1999 – Present**

Pipeline regulatory advisor, incident investigator, and expert witness on all matters related to gas and liquid pipeline siting, design, operation, maintenance, risk analysis, and management.

Position: President
Duties:
> Full business responsibility
> Technical Expert

Alaska Anvil Inc. **1993 – 1999**

Engineering, procurement, and construction (EPC) oversight for various clients on oil production facilities, refining, and transportation pipeline design/operations in Alaska.

Position: Process Team Leader
Duties:
> Led process engineers group
> Review process designs
> Perform hazard analysis
> HAZOP Team leader
> Assure regulatory compliance in pipeline and process safety management

ARCO Transportation Alaska, Inc. **1991 - 1993**

Oversight of Trans Alaska Pipeline System (TAPS) and other Alaska pipeline assets for Arco after the Exxon Valdez event.

Position: Senior Technical Advisor
Duties:
> Access to all Alaska operations with partial Arco ownership
> Review, analysis of major Alaska pipeline projects

ARCO Transportation Co. **1989 – 1991**

Responsible for strategic planning, design, government interface, and construction of new gas pipeline projects, as well as gas pipeline acquisition/conversions.

Position: Manager Gas Pipeline Projects
Duties:
> Project management
> Oil pipeline conversion to gas transmission
> New distribution pipeline installation
> Full turnkey responsibility for new gas transmission pipeline, including FERC filing

Four Corners Pipeline Co. **1985 – 1989**

Managed operations of crude oil and product pipelines/terminals/berths/tank farms operating in western U.S., including regulatory compliance, emergency and spill response, and telecommunications and SCADA organizations supporting operations.

Position: Vice President and Manager of Operations
Duties:
> Full operational responsibility
> Major ship berth operations
> New acquisitions
> Several thousand miles of common carrier and private pipelines

Arco Product CQC Kiln **1985**

Operations manager of new plant acquisition, including major cogeneration power generation, with full profit center responsibility.

Position: Plant Manager
Duties:
> Team building of new facility that had been failing
> Plant design modifications and troubleshooting
> Setting expense and capital budgets, including key gas supply negotiations
> Modification of steam plant, power generation, and environmental controls

Arco Products Co. **1981 - 1985**

Operated Refined Product Blending, Storage and Handling Tank Farms, as well as Utility and Waste Water Treatment Operations for the third largest refinery on the west coast.

Position: Operations Manager of Process Services
Duties:
> Modernize refinery utilities and storage/blending operations
> Develop hydrocarbon product blends, including RFGs
> Modification of steam plants, power generation, and environmental controls
> Coordinate new major cogeneration installation, 400 MW plus

Arco Products Co. **1977 - 1981**

Coordinated short and long-range operational and capital planning, and major expansion for two west coast refineries.

Position: Manager of Refinery Planning and Evaluation
Duties:
> Establish monthly refinery volumetric plans
> Develop 5-year refinery long range plans
> Perform economic analysis for refinery enhancements
> Issue authorization for capital/expense major expenditures

Arco Products Co. **1973 - 1977**

Operating Supervisor and Process Engineer for various major refinery complexes.

Position: Operations Supervisor/Process Engineer
Duties:
> FCC Complex Supervisor
> Hydrocracker Complex Supervisor
> Process engineer throughout major integrated refinery improving process yield and energy efficiency

Qualifications:

Served for over fifteen years as a member representing the public on the federal Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC), a technical committee established by Congress to advise PHMSA on pipeline safety regulations.

Committee members are appointed by the Secretary of Transportation.

Served seven years, including position as its chairman, on the Washington State Citizens Committee on Pipeline Safety (CCOPS).

Positions are appointed by the governor of the state to advise federal, state, and local governments on regulatory matters related to pipeline safety, routing, construction, operation and maintenance.

Served on Executive subcommittee advising Congress and PHMSA on a report that culminated in new federal rules concerning Distribution Integrity Management Program (DIMP) gas distribution pipeline safety regulations.

As a representative of the public, advised the Office of Pipeline Safety on proposed new liquid and gas transmission pipeline integrity management rulemaking following the pipeline tragedies in Bellingham, Washington (1999) and Carlsbad, New Mexico (2000).

Member of Control Room Management committee assisting PHMSA on development of pipeline safety Control Room Management (CRM) regulations.

Certified and experienced HAZOP Team Leader associated with process safety management and application.

Education:

MBA (1976)	Pepperdine University, Los Angeles, CA
BS Chemical Engineering (1973)	University of California, Davis, CA
BS Chemistry (1973)	University of California, Davis, CA

Publications in the Public Domain:

1. "An Assessment of First Responder Readiness for Pipeline Emergencies in the State of Washington," prepared for the Office of the State Fire Marshall, by Hanson Engineers Inc., Elway Research Inc., and Accufacts Inc., and dated June 26, 2001.

2. "Preventing Pipeline Failures," prepared for the State of Washington Joint Legislative Audit and Review Committee ("JLARC"), by Richard B. Kuprewicz, President of Accufacts Inc., dated December 30, 2002.

3. "Pipelines - National Security and the Public's Right-to-Know," prepared for the Washington City and County Pipeline Safety Consortium, by Richard B. Kuprewicz, dated May 14, 2003.

4. "Preventing Pipeline Releases," prepared for the Washington City and County Pipeline Safety Consortium, by Richard B. Kuprewicz, dated July 22, 2003.

5. "Pipeline Integrity and Direct Assessment, A Layman's Perspective," prepared for the Pipeline Safety Trust by Richard B. Kuprewicz, dated November 18, 2004.

6. "Public Safety and FERC's LNG Spin, What Citizens Aren't Being Told," jointly authored by Richard B. Kuprewicz, President of Accufacts Inc., Clifford A. Goudey, Outreach Coordinator MIT Sea Grant College Program, and Carl M. Weimer, Executive Director Pipeline Safety Trust, dated May 14, 2005.

7. "A Simple Perspective on Excess Flow Valve Effectiveness in Gas Distribution System Service Lines," prepared for the Pipeline Safety Trust by Richard B. Kuprewicz, dated July 18, 2005.

8. "Observations on the Application of Smart Pigging on Transmission Pipelines," prepared for the Pipeline Safety Trust by Richard B. Kuprewicz, dated September 5, 2005.

9. "The Proposed Corrib Onshore System - An Independent Analysis," prepared for the Centre for Public Inquiry by Richard B. Kuprewicz, dated October 24, 2005.

10. "Observations on Sakhalin II Transmission Pipelines," prepared for The Wild Salmon Center by Richard B. Kuprewicz, dated February 24, 2006.

11. "Increasing MAOP on U.S. Gas Transmission Pipelines," prepared for the Pipeline Safety Trust by Richard B. Kuprewicz, dated March 31, 2006. This paper was also published in the June 26 and July 1, 2006 issues of the Oil & Gas Journal and in the December 2006 issue of the UK Global Pipeline Monthly magazines.

12. "An Independent Analysis of the Proposed Brunswick Pipeline Routes in Saint John, New Brunswick," prepared for the Friends of Rockwood Park, by Richard B. Kuprewicz, dated September 16, 2006.

13. "Commentary on the Risk Analysis for the Proposed Emera Brunswick Pipeline Through Saint John, NB," by Richard B. Kuprewicz, dated October 18, 2006.

14. "General Observations On the Myth of a Best International Pipeline Standard," prepared for the Pipeline Safety Trust by Richard B. Kuprewicz, dated March 31, 2007.

15. "Observations on Practical Leak Detection for Transmission Pipelines – An Experienced Perspective," prepared for the Pipeline Safety Trust by Richard B. Kuprewicz, dated August 30, 2007.

16. "Recommended Leak Detection Methods for the Keystone Pipeline in the Vicinity of the Fordville Aquifer," prepared for TransCanada Keystone L.P. by Richard B. Kuprewicz, President of Accufacts Inc., dated September 26, 2007.

17. "Increasing MOP on the Proposed Keystone XL 36-Inch Liquid Transmission Pipeline," prepared for the Pipeline Safety Trust by Richard B. Kuprewicz, dated February 6, 2009.

18. "Observations on Unified Command Drift River Fact Sheet No 1: Water Usage Options for the current Mt. Redoubt Volcano threat to the Drift River Oil Terminal," prepared for Cook Inletkeeper by Richard B. Kuprewicz, dated April 3, 2009.

19. "Observations on the Keystone XL Oil Pipeline DEIS," prepared for Plains Justice by Richard B. Kuprewicz, dated April 10, 2010.

20. "PADD III & PADD II Refinery Options for Canadian Bitumen Oil and the Keystone XL Pipeline," prepared for the Natural Resources Defense Council (NRDC), by Richard B. Kuprewicz, dated June 29, 2010.

21. "The State of Natural Gas Pipelines in Fort Worth," prepared for the Fort Worth League of Neighborhoods by Richard B. Kuprewicz, President of Accufacts Inc., and Carl M. Weimer, Executive Director Pipeline Safety Trust, dated October, 2010.

22. "Accufacts' Independent Observations on the Chevron No. 2 Crude Oil Pipeline," prepared for the City of Salt Lake, Utah, by Richard B. Kuprewicz, dated January 30, 2011.

23. "Accufacts' Independent Analysis of New Proposed School Sites and Risks Associated with a Nearby HVL Pipeline," prepared for the Sylvania, Ohio School District, by Richard B. Kuprewicz, dated February 9, 2011.

24. "Accufacts' Report Concerning Issues Related to the 36-inch Natural Gas Pipeline and the Application of Appleview, LLC Premises: 7009 and 7010 River Road, North Bergen, NJ," prepared for the Galaxy Towers Condominium Association Inc., by Richard B. Kuprewicz, dated February 28, 2011.

25. "Prepared Testimony of Richard B. Kuprewicz Evaluating PG&E's Pipeline Safety Enhancement Plan," submitted on behalf of The Utility Reform Network (TURN), by Richard B. Kuprewicz, Accufacts Inc., dated January 31, 2012.

26. "Evaluation of the Valve Automation Component of PG&E's Safety Enhancement Plan," extracted from full testimony submitted on behalf of The Utility Reform Network (TURN), by Richard B.Kuprewicz, Accufacts Inc., dated January 31, 2012, Extracted Report issued February 20, 2012.

27. "Accufacts' Perspective on Enbridge Filing to NEB for Modifications on Line 9 Reversal Phase I Project," prepared for Equiterre Canada, by Richard B. Kuprewicz, Accufacts Inc., dated April 23, 2012.

28. "Accufacts' Evaluation of Tennessee Gas Pipeline 300 Line Expansion Projects in PA & NJ," prepared for the Delaware RiverKeeper Network, by Richard B. Kuprewicz, Accufacts Inc., dated June 27, 2012.

29. "Impact of an ONEOK NGL Pipeline Release in At-Risk Landslide and/or Sinkhole Karst Areas of Crook County, Wyoming," prepared for landowners, by Richard B. Kuprewicz, Accufacts Inc., and submitted to Crook County Commissioners, dated July 16, 2012.

30. "Impact of Processing Dilbit on the Proposed NPDES Permit for the BP Cherry Point Washington Refinery," prepared for the Puget Soundkeeper Alliance, by Richard B. Kuprewicz, Accufacts Inc., dated July 31, 2012.

31. "Analysis of SWG's Proposed Accelerated EVPP and P70VSP Replacement Plans, Public Utilities Commission of Nevada Docket Nos. 12-02019 and 12-04005," prepared for the State of Nevada Bureau of Consumer Protection, by Richard B. Kuprewicz, Accufacts Inc., dated August 17, 2012.

32. "Accufacts Inc. Most Probable Cause Findings of Three Oil Spills in Nigeria," prepared for Bohler Advocaten, by Richard B. Kuprewicz, Accufacts Inc., dated September 3, 2012.

33. "Observations on Proposed 12-inch NGL ONEOK Pipeline Route in Crook County Sensitive or Unstable Land Areas," prepared by Richard B. Kuprewicz, Accufacts Inc., dated September 13, 2012.

34. "Findings from Analysis of CEII Confidential Data Supplied to Accufacts Concerning the Millennium Pipeline Company L.L.C. Minisink Compressor Project Application to FERC, Docket No. CP11-515-000," prepared by Richard B. Kuprewicz, Accufacts Inc., for Minisink Residents for Environmental Preservation and Safety (MREPS), dated November 25, 2012.

35. "Supplemental Observations from Analysis of CEII Confidential Data Supplied to Accufacts Concerning Tennessee Gas Pipeline's Northeast Upgrade Project," prepared by Richard B. Kuprewicz, Accufacts Inc., for Delaware RiverKeeper Network, dated December 19, 2012.

36. “Report on Pipeline Safety for Enbridge’s Line 9B Application to NEB,” prepared by Richard B. Kuprewicz, Accufacts Inc., for Equiterre, dated August 5, 2013.

37. “Accufacts’ Evaluation of Oil Spill Joint Investigation Visit Field Reporting Process for the Niger Delta Region of Nigeria,” prepared by Richard B. Kuprewicz for Amnesty International, September 30, 2013.

38. “Accufacts’ Expert Report on ExxonMobil Pipeline Company Silvertip Pipeline Rupture of July 1, 2011 into the Yellowstone River at the Laurel Crossing,” prepared by Richard B. Kuprewicz, November 25, 2013.

39. “Accufacts Inc. Evaluation of Transco’s 42-inch Skillman Loop submissions to FERC concerning the Princeton Ridge, NJ segment,” prepared by Richard B. Kuprewicz for the Princeton Ridge Coalition, dated June 26, 2014, and submitted to FERC Docket No. CP13-551.

40. Accufacts report “DTI Myersville Compressor Station and Dominion Cove Point Project Interlinks,” prepared by Richard B. Kuprewicz for Earthjustice, dated August 13, 2014, and submitted to FERC Docket No. CP13-113-000.

41. “Accufacts Inc. Report on EA Concerning the Princeton Ridge, NJ Segment of Transco’s Leidy Southeast Expansion Project,” prepared by Richard B. Kuprewicz for the Princeton Ridge Coalition, dated September 3, 2014, and submitted to FERC Docket No. CP13-551.

42. Accufacts’ “Evaluation of Actual Velocity Critical Issues Related to Transco’s Leidy Expansion Project,” prepared by Richard B. Kuprewicz for Delaware Riverkeeper Network, dated September 8, 2014, and submitted to FERC Docket No. CP13-551.

43. “Accufacts’ Report to Portland Water District on the Portland – Montreal Pipeline,” with Appendix, prepared by Richard B. Kuprewicz for the Portland, ME Water District, dated July 28, 1014.

44. “Accufacts Inc. Report on EA Concerning the Princeton Ridge, NJ Segment of Transco’s Leidy Southeast Expansion Project,” prepared by Richard B. Kuprewicz and submitted to FERC Docket No. CP13-551.

45. Review of Algonquin Gas Transmission LLC’s Algonquin Incremental Market (“AIM Project”), Impacting the Town of Cortlandt, NY, FERC Docket No. CP14-96-0000, Increasing System Capacity from 2.6 Billion Cubic Feet (Bcf/d) to 2.93 Bcf/d,” prepared by Richard B. Kuprewicz, and dated Nov. 3, 2014.

46. Accufacts’ Key Observations dated January 6, 2015 on Spectra’s Recent Responses to FERC Staff’s Data Request on the Algonquin Gas Transmission Proposal (aka “AIM Project”), FERC Docket No. CP 14-96-000) related to Accufacts’ Nov. 3, 2014 Report and prepared by Richard B. Kuprewicz.

47. Accufacts’ Report on Mariner East Project Affecting West Goshen Township, dated March 6, 2015, to Township Manager of West Goshen Township, PA, and prepared by Richard B. Kuprewicz.

48. Accufacts’ Report on Atmos Energy Corporation (“Atmos”) filing on the Proposed System Integrity Projects (“SIP”) to the Mississippi Public Service Commission (“MPSC”) under Docket No. 15-UN-049 (“Docket”), prepared by Richard B. Kuprewicz, dated June 12, 2015.

49. Accufacts’ Report to the Shwx’owhamel First Nations and the Peters Band (”First Nations”) on the Trans Mountain Expansion Project (“TMEP”) filing to the Canadian NEB, prepared by Richard B. Kuprewicz, dated April 24, 2015.

50. Accufacts Report Concerning Review of Siting of Transco New Compressor and Metering Station, and Possible New Jersey Intrastate Transmission Pipeline Within the Township of Chesterfield, NJ (“Township”), to the Township of Chesterfield, NJ, dated February 18, 2016.

51. Accufacts Report, “Accufacts Expert Analysis of Humberplex Developments Inc. v. TransCanada Pipelines Limited and Enbridge Gas Distribution Inc.; Application under Section 112 of the National Energy Board Act, R.S.C. 1985, c. N-7,” dated April 26, 2016, filed with the Canadian Nation Energy Board (NEB).

52. Accufacts Report, “ A Review, Analysis and Comments on Engineering Critical Assessments as proposed in

PHMSA's Proposed Rule on Safety of Gas Transmission and Gathering Pipelines," prepared for Pipeline Safety Trust by Richard B. Kuprewicz, dated May 16, 2016.

53. Accufacts' Report on Atmos Energy Corporation ("Atmos") filing to the Mississippi Public Utilities Staff, "Accufacts Review of Atmos Spending Proposal 2017 – 2021 (Docket N. 2015-UN-049)," prepared by Richard B. Kuprewicz, dated August 15, 2016.

54. Accufacts Report, "Accufacts Review of the U.S. Army Corps of Engineers (USACE) Environmental Assessment (EA) for the Dakota Access Pipeline ("DAPL")," prepared for Earthjustice by Richard B. Kuprewicz, dated October 28, 2016.

55. Accufacts' Report on Mariner East 2 Expansion Project Affecting West Goshen Township, dated January 6, 2017, to Township Manager of West Goshen Township, PA, and prepared by Richard B. Kuprewicz.

56. Accufacts Review of Puget Sound Energy's Energize Eastside Transmission project along Olympic Pipe Line's two petroleum pipelines crossing the City of Newcastle, for the City of Newcastle, WA, June 20, 2017.

57. Accufacts Review of the Draft Environmental Impact Statement for the Line 3 Pipeline Project Prepared for the Minnesota Department of Commerce, July 9, 2017, filed on behalf of Friends of the Headwaters, to Minnesota State Department of Commerce for Docket Nos. CN-14-916 & PPL-15-137.

58. Testimony of Richard B. Kuprewicz, president of Accufacts Inc., in the matter West Goshen Township and Concerned Citizens of West Goshen Township v. Sunoco Pipelines, L.P. before the Pennsylvania Public Utilities Commission, Docket No. C-2017-2589346, on July 18, 2017, on Behalf of West Goshen Township and Concerned Citizens of West Goshen Township.

59. Direct Testimony of Richard B. Kuprewicz, president of Accufacts Inc., on Behalf of Friends of the Headwaters regarding Enbridge Energy, Limited Partnership proposal to replace and reroute an existing Line 3 to the Minnesota Office of Administrative Hearings for the Minnesota Public Utilities Commission (MPUC PL-9/CN-14-916 and MPUC PL-9/PPL-15-137), September 11, 2017 and October 23, 2017.

60. Direct Testimony of Richard B. Kuprewicz On Behalf of The District of Columbia Government, before the Public Service Commission of the District of Columbia, in the matter of the merger of AltaGas Ltd. and WGL Holdings, Inc., Formal Case No. 1142, September 29, 2017.

61. Report to Mississippi Public Utilities Staff ("MPUS"), "Accufacts Review on Atmos Energy Corporation's Proposed Capital Budget for Fiscal Year 2018 related to System Integrity Program Spending (Docket N. 2015-UN-049)," prepared by Richard B. Kuprewicz, dated December 4, 2017.

62. Report to Hugh A. Donaghue, Esquire, Concord Township Solicitor, "Accufacts Comments on Adelphia Project Application to FERC (Docket No. CP18-46-000) as it might impact Concord Township," dated May 30, 2018.

63. Report to Mississippi Public Utilities Staff ("MPUS"), "Accufacts Review on Atmos Energy Corporation's Proposed Capital Budget for Fiscal Year 2019 related to System Integrity Program Spending (Docket N. 2015-UN-049)," prepared by Richard B. Kuprewicz, dated August 20, 2018.

64. Report to West Goshen Township Manager, PA, "Accufacts report on the repurposing of an existing 12-inch Sunoco pipeline segment to interconnect with the Mariner East 2 and Mariner East 2X crossing West Goshen Township," dated November 8, 2018.

65. Report to West Whiteland Township Manager, PA, "Accufacts Observations on Possible Pennsylvania State Pipeline Safety Regulations," prepared by Richard B. Kuprewicz, dated March 22, 2019.

66. Accufacts Public Comments on the Proposed Joint Settlement, BI&E v. Sunoco Pipeline L.P. ("SPLP"), Docket No. C-2018-3006534 ("Proposed Settlement"), submitted on August 15, 2019 to the Pennsylvania Public Utility Commission on the behalf of West Goshen Township as an intervener.

67. Report to West Whiteland Township Manage, Ms. Mimi Gleason, "Accufacts Perspective on Two Questions from West Whiteland's Board of Supervisors on Proposed Changes to ME 2 and ME 2X Construction/Operational Activities within West Whiteland," dated September 5, 2019."

68. Report to West Goshen Township Manager, Mr. Casey LaLonde, “Accufacts Report on the episode on the evening of 8-5-19 at the Mariner East Boot Road Pump Station (“Event”), Boot Road, West Goshen Township, PA,” dated September 16, 2019.

69. Report to West Goshen Township Manager, Mr. Casey LaLonde, “Accufacts Report on the Mariner East 2X Pipeline Affecting West Goshen Township,” dated July 23, 2020.

70. Report to Natural Resources Defense Council, Inc., “Accufacts’ Observations on the Use of Keystone XL Pipeline Pipe Exhibiting External Coating Deterioration Issues from Long Term Storage Exposure to the Elements,” October 1, 2020.

Statement from Governor Whitmer's Office on Today's Legal Filings Regarding Line 5

FOR IMMEDIATE RELEASE
June 27, 2019

Statement from Governor Whitmer's Office on Today's Legal Filings Regarding Line 5

Governor Whitmer directs Department of Natural Resources to review Enbridge's compliance with the 1953 Easement

LANSING, Mich. – Tiffany Brown, Press Secretary for Governor Whitmer, issued the following statement commenting on today's legal filings regarding Line 5:

"The governor's primary goal has always been and remains to get the Line 5 dual pipelines out of the Straits of Mackinac as soon as possible. The risk of a catastrophic oil spill in the Great Lakes, and the harm that would follow to Michigan's economy, tourism, and our way of life, is far too great to allow the pipelines to continue to operate indefinitely. As a recent National Transportation Safety Board report documented, any doubt as to the risk posed by Line 5 was erased in April 2018 when a barge dragging a 12,000-pound anchor nearly caused disaster.

"The governor has never viewed litigation as the best solution to this problem, and for this reason she entered negotiations with Enbridge about the possible construction of a tunnel. Her reasonable requirement has been that the dual pipelines through the Straits cease operation at a date certain, after allowing for a period of transition. Enbridge, however, has insisted that it be allowed to run oil through the Great Lakes indefinitely. Rather than negotiating, Enbridge walked away and filed a lawsuit. Today, Governor Whitmer filed her response asking the court to dismiss Enbridge's lawsuit.

"For several months the attorney general has indicated she would use her independent authority to seek to shut down the dual pipelines through the Straits if Enbridge did not reach an acceptable agreement with the governor. Today, the attorney general followed through on her promise by filing a separate action.

“Although the governor remains willing to talk with Enbridge, her commitment to stopping the flow of oil through the Great Lakes as soon as possible – and Enbridge’s decision to sue the governor rather than negotiate – will at some point require her to take legal action, as well. For that reason, today the governor has directed the Department of Natural Resources to begin a comprehensive review of Enbridge’s compliance with the 1953 Easement, and other factors affecting its validity. The 1953 Easement created the terms and conditions under which Enbridge could operate the dual pipelines on the bottomlands of the Great Lakes. Possible violations of the easement are just one of several grounds by which the state could seek to shut down the pipelines, some of which the attorney general has already invoked today.”

###

STATE OF MICHIGAN

COURT OF APPEALS

JOHN BUGGS and DANIEL BONAMIE,

Appellants,

v

MICHIGAN PUBLIC SERVICE COMMISSION,

Appellee,

and

DTE MICHIGAN GATHERING HOLDING COMPANY, assignee of ENCANA OIL & GAS (USA), INC.,

Petitioner-Appellee.

UNPUBLISHED
January 13, 2015

No. 315058
Public Service Commission
LC No. 00-017195

JOHN BUGGS and DANIEL BONAMIE,

Appellants,

v

MICHIGAN PUBLIC SERVICE COMMISSION,

Appellee,

and

DTE MICHIGAN GATHERING HOLDING COMPANY, assignee of ENCANA OIL & GAS (USA), INC.,

Petitioner-Appellee.

No. 315064
Public Service Commission
LC No. 00-017196

Before: M. J. KELLY, P.J., and CAVANAGH and METER, JJ.

PER CURIAM.

In this dispute over the construction and use of gas pipelines, appellants, John Buggs and Daniel Bonamie, appeal by right the ex parte orders issued by appellee, Michigan Public Service Commission, which gave petitioner, DTE Michigan Gathering Holding Company, as the successor in interest to Encana Oil & Gas (USA), Inc. (Encana Oil),[1] permission to construct, own, and operate two natural gas pipelines: the Garfield 36 Pipeline (Docket No. 315058) and the Beaver Creek 11 Pipeline (Docket No. 315064). For the reasons more fully explained below, we conclude that the Commission's orders were unlawful. Accordingly, we vacate those orders and remand for a new determination of necessity on each application.

I. BASIC FACTS

1. THE GARFIELD 36 PIPELINE

In January 2013, Encana Oil applied for a certificate of public convenience and approval to construct, own, and operate a 1.9 mile long natural gas pipeline under 1929 PA 9 (Act 9), MCL 483.101 *et seq.* Encana Oil referred to the pipeline as the Garfield 36 Pipeline. Encana Oil represented it would use the pipeline to transport gas recovered from a single well with a recoverable reserve of 2 to 3 billion standard cubic feet of gas. However, it also stated that it anticipated drilling additional wells into the Collingwood formation. It stated that the pipeline would be constructed with anticipated easements and permits "adjacent to the well pad access road" on land owned by the Michigan Department of Natural Resources (the Department) and within the county's right of way to the point where it would connect with Michigan Consolidated Gas Company's Saginaw Bay Pipeline. Encana Oil provided a map of the proposed route and engineering specifications which provided that the pipeline would be capable of transporting up to 40 million standard cubic feet of gas per day. Encana Oil further represented that the pipeline was necessary for its business, that the gas would ultimately be available to Michigan consumers, that without the pipeline there would be no public access to gas reserves in that area, and that the pipeline was "the most efficient and cost-effective means to bring these gas reserves to the public."

Encana Oil also filed an environmental impact assessment with its application. Dean Farrier prepared the assessment and stated that he was a consulting biologist. He represented that the proposed pipeline would be constructed entirely on land owned by the Department and along existing corridors such that there would be "minimal impact to the local ecosystems and land use," and that no alternatives reviewed had less impact. He noted that the route crossed some wetlands and that the pipeline would "be directionally drilled under the series of wetlands for 1027 feet" to "minimize the impact to that feature." He represented that the wetland crossing was exempt from the Natural Resources and Environmental Protection Act, MCL 324.101 *et seq*. Farrier also indicated that clearing would be limited to "the minimum area required for safe and

[1] During the pendency of this appeal, Encana Oil moved to substitute DTE Holding as the party in interest after it assigned all of its interests in the pipelines to DTE Holding. This Court granted the motion. However, because all proceedings below occurred while Encana Oil was still a party, for ease of reference we shall refer to Encana Oil, rather than its successor, DTE Holding.

efficient construction," and that to the best of his knowledge there were no threatened or endangered species within the proposed easement or along the proposed route. Finally, he represented that underground pipelines were the safest way to transport petroleum products, and that the potential for release was low and, in any event, unlikely to "significantly harm surrounding plants, wildlife, or soils." Further, although the possibility of ignition and fire was a danger, the human population density in the vicinity was "extremely low."

The Commission approved the proposed pipeline project in an ex parte order issued later that same month.

2. BEAVER CREEK 11 PIPELINE

In January 2013, Encana Oil also filed an application for approval and a certificate of public convenience and necessity to construct, own, and operate a 3.1 mile long natural gas pipeline that it referred to as the Beaver Creek 11 Pipeline, which was also to collect gas from the Collingwood formation and connect to Michigan Consolidated Gas Company's Saginaw Bay Pipeline over land belonging to the Department. The pipeline was to service a single well with 2 to 3 billion standard cubic feet of gas but, again, Encana Oil anticipated that it would add "a significant number of wells" in the future. It also again represented that the pipeline was necessary for its business, that without it the public would not have access to gas reserves in the area, and that it was the most efficient and cost-effective means of delivering the gas.

Farrier prepared an environmental impact assessment for this project as well. Farrier again stated that the route was along existing corridors on the Department's land except for a small percentage of the route, which was on land owned by the Department of Transportation; however, he acknowledged that the route crossed privately-owned land and that there were five residences within 1/8th of a mile, but that the route was within the county right-of-way. Again, he represented that to the best of his knowledge there were no threatened or endangered species within the proposed easement or route and that "[c]learing, removal of topsoil, and grading will be limited to the minimum area required for safe and efficient construction." He also said the route "offers the minimal impact to the local ecosystems and land use," and that "[a]lternatives were reviewed and none appeared to have less impact . . . ." As with the other assessment, he asserted that underground pipelines were the safest way to transport petroleum products, that the potential for release was low and unlikely to "significantly harm surrounding plants, wildlife or soils," and that although the possibility of ignition and fire was a danger, the human population density in the vicinity was "extremely low."

The Commission approved the project in an ex parte order issued in January 2013.

The parties do not dispute that both pipelines have since been constructed and have begun transporting gas.

3. PROCEEDINGS

In March 2013, Buggs and Bonamie applied for permission to intervene in both of Encana Oil's applications. Specifically, they asked the Commission to consolidate the proceedings, vacate its previous orders, and hold a hearing to receive additional evidence.

That same month Buggs and Bonamie appealed in this Court and moved to hold the appeals in abeyance pending a decision by the Commission on whether to allow additional evidence. This Court issued an order consolidating the appeals and issued an order staying appellate proceedings and holding the appeals in abeyance until the Commission "disposes of the petition to receive additional evidence and, if additional evidence is received, issues a final order after consideration of the additional evidence."[2]

In April 2013, the Commission denied the petitions to intervene by Buggs and Bonamie on the ground that they were not proper intervenors:

> Mere interest in a proceeding's outcome is insufficient to support intervention. The Commission has long held that prospective intervenors must generally satisfy the two-prong test established in *Association of Data Processing Services Organizations, Inc v Camp*, 397 US 150; 90 S Ct 827; 25 L Ed 2d 184 (1970) . . . . This test requires the party in question to show: (1) that it suffered an injury in fact and (2) that the interest allegedly damaged falls within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.
>
> . . . Petitioners have failed to satisfy either criterion. Specifically, Petitioners' allegation that protected wildlife and the environment may be harmed as the result of future drilling does not establish that Petitioners have suffered any concrete or discernible injury in fact. In addition, Petitioners' allegations that the plans interfere with their or the public's future use and enjoyment of the area likewise fail to establish that they suffered an injury in fact or that the "damaged interest" falls within the zone of interests Act 9 was designed to protect or regulate.

The Commission later denied Buggs and Bonamie's motion for reconsideration. In denying reconsideration, the Commission rejected the contention by Buggs and Bonamie that it had an obligation to consider the environmental impact of the proposed pipelines:

> [D]espite the Petitioners' assertion that modern law has "overtaken" Act 9, the Commission is required to apply the law as written. Amendments or additions to the Act must come from the Legislature. The Commission lacks the authority to amend the Act or to expand its reach simply because the Petitioners ask it to. Similarly, contrary to the Petitioners' argument that the Michigan Environmental Protection Act "imposes a duty on the state and on agencies like this commission to consider the likely environmental effects of the proposed conduct," the Commission lacks statutory authority to enforce that law or other environmental laws. Further, the Petitioners have failed to identify any specific duties that the law imposes on the Commission.

---

[2] See *In re Application of Encana Oil & Gas Inc re Garfield 36 Pipeline*, unpublished order of the Court of Appeals, entered March 25, 2013 (Docket Nos. 315058, 315064); *In re Application of Encana Oil & Gas Inc re Garfield 36 Pipeline*, unpublished order of the Court of Appeals, entered April 3, 2013 (Docket Nos. 315058, 315064).

> The Petitioners also argue that the Commission Staff's (Staff) failure to investigate Encana [Oil]'s environmental impact assessment (EIA), as compared to the Staff's independent environmental review in Case No. U-9138, warrants reconsideration and approval of the petition. Having reviewed the matter, we conclude that there was no legal error or other basis to warrant reversal of our initial decision denying the Petitioners intervention.
>
> Although the Petitioners are correct that, in Case No. U-9138, the Staff conducted its own environmental review in order to conclude that construction would not constitute a "major site activity," that case has no bearing on the matter presently before the Commission. Moreover, the Petitioners cite no legal authority to support their assertion that, because the Staff conducted an independent review of an issue in one Act 9 pipeline case, it must do so in each case. The criteria that the Commission is statutorily authorized to consider in an Act 9 pipeline construction application includes the map of the proposed line, the route, the type of construction and the necessity and practicability of the pipeline so that the Commission may determine whether the proposed construction serves the convenience and necessity of the public. MCL 483.109.
>
> Here, the Petitioners have chosen the wrong forum in which to bring their claims. If they want to protect the natural habitats of the Kirtland's warbler or other wildlife from diminution, or protect the environment from forest fragmentation, they need to file a lawsuit in a court with proper jurisdiction to consider the issues. The Commission is unable to grant the Petitioners' motion for reconsideration because they have chosen the wrong forum in which to seek redress.

In August 2013, Encana Oil moved to dismiss the appeal by Buggs and Bonamie for lack of jurisdiction. A majority of this Court denied the motion because Encana Oil failed to establish that the Court of Appeals lacked jurisdiction:

> Petitioner's argument that appellants are not parties in interest within the meaning of MCL 462.26 because they were not parties to the . . . [administrative] proceedings must be rejected because, by equating the phrase "party in interest" used in that statutory provision with the term "party," petitioner would improperly render the words "in interest" nugatory or mere surplusage. See, e.g., *Whitman v City of Burton*, 493 Mich 303, 311-312; 831 [NW2d 223] (2013). Rather, by using the broader phrase "party in interest," the Legislature has necessarily allowed persons or entities who are not parties to the relevant [Commission] case to file an appeal of right from the relevant types of [Commission] orders. Further, contrary to petitioner's argument that one needs to be a party to a case to be an aggrieved party under MCR 7.203(A), there are situations where a non-party to a case is an aggrieved party with standing to appeal. See *Abel v Grossman Investments Co*, [302 Mich App 232; 838 NW2d 204 (2013)]. Also, *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286; 715 NW2d 846 (2006), is inapplicable. Contrary to petitioner's discussion of that case, its holding was not based on the Attorney General not being a named party. See *id*., 296 n 10.

> Rather, the Attorney General was manifestly not an aggrieved party in that case because he was not pursuing an appeal based on an interest in the outcome of the particular case but merely to dispute this Court's construction of a statute. See *id*., 290. Thus, we need not consider whether *Federated Ins Co* has been undermined by *Lansing Schools Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349; 792 NW2d 686 (2010). However, we note that review of the June 28, 2013 . . . order is not in the scope of the present appeals from January 31, 2013 orders of the [Commission]. Rather, appellants may only challenge the January 31, 2013 [Commission] orders . . . .[3]

We now consider the issues on appeal.

II. THE ORDERS

A. STANDARDS OF REVIEW

Buggs and Bonamie argue that the Commission erred when it issued the orders approving the pipelines without following the requirements stated under Act 9. Specifically, they maintain that, under Michigan's Environmental Protection Act (MEPA), MCL 324.1701 *et seq.*, the Commission had to conduct an environmental review before making its decision concerning the convenience and necessity of the proposed pipelines, which it did not do. Moreover, they argue, Encana Oil's environmental assessments did not provide a sufficient basis for evaluating the environmental impact. Given these defects, Buggs and Bonamie argue that the Commission should have rejected the applications.

Buggs and Bonamie were not parties to the proceedings below and, for that reason, were not able to raise these issues before the Commission before it issued its orders. Thus, this issue was not properly preserved for review. Nevertheless, this Court has the discretion to consider the issue for the first time on appeal. *Bailey v Schaaf (On Remand)*, 304 Mich App 324, 345; 852 NW2d 180 (2014). And, because this claim of error concerns a question of law and all the

---

[3] *In re Application of Encana Oil & Gas Inc re Garfield 36 Pipeline*, unpublished order of the Court of Appeals, entered September 25, 2013 (Docket Nos. 315058 & 315064). Although Buggs and Bonamie have restricted the issues presented on appeal to those involved in the January 2013 order, they have referred to and incorporated pleadings and documents from subsequent proceedings; they refer to affidavits, pleadings, and documents to establish that they live in the area, were not given notice of the applications, and understand that Encana Oil (or DTE Holding) plans to add 500 to 1,700 wells and associated pipelines to the system. Buggs and Bonamie also state their belief that the gas exploration and development activity can have an extreme effect on the landscape, that the habitat of the Kirtland Warbler will be adversely affected, and relate accounts of dead birds. Because these issues were not before the Commission when it issued its orders, we will not consider them in determining whether the Commission erred when it issued those orders. Nonetheless, the Commission's decision on reconsideration of the denial of the motion to intervene is pertinent to understanding the basis of its refusal to allow intervention.

facts necessary for our review have been presented by the parties, and because the failure to consider the claim may result in a miscarriage of justice, we elect to exercise our discretion to consider the issue. See *Autodie, LLC v City of Grand Rapids*, 305 Mich App 423, 431; 852 NW2d 650 (2014).

In order to prevail, Buggs and Bonamie must demonstrate by clear and convincing evidence that the Commission's orders were unlawful or unreasonable. MCL 462.26(8). An order is unlawful if the Commission failed to follow a statutory requirement or abused its discretion. *In re Application of Consumers Energy Co for Rate Increase*, 291 Mich App 106, 109-110; 804 NW2d 574 (2010). The Commission's orders must be authorized by law and supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28. This Court reviews de novo whether the Commission exceeded the scope of its authority. *In re Application of Consumers Energy Co*, 291 Mich App at 110. This Court also reviews de novo the proper interpretation of statutes. *Huntington Nat'l Bank v Daniel J Aronoff Living Trust*, 305 Mich App 496, 507; 853 NW2d 481 (2014).

B. ANALYSIS

The Commission is a "creature of the Legislature" possessing only the "authority bestowed upon it by statute"; it "possesses no 'common law' powers." *Union Carbide Corp v Pub Serv Comm*, 431 Mich 135, 146; 428 NW2d 322 (1988). "Thus, a determination of the commission's powers requires an examination of the various statutory enactments pertaining to its authority." *Id.*

The Legislature vested the Commission with the power to control and regulate "corporations, associations and persons engaged, directly or indirectly, in the business of purchasing or selling or transporting natural gas for public use" under Act 9. MCL 483.103. The Commission is further required to "investigate any alleged neglect or violation of the laws of the state by any corporation, association or person purchasing or selling natural gas and transmitting or conveying the same by pipe line or lines for public use . . . ." *Id.*

Anyone proposing to pipe or transport natural gas in Michigan must comply with Act 9. MCL 483.101. Moreover, before constructing a pipeline to transport natural gas, the person proposing to construct the line must apply to the Commission for permission to construct the pipeline. MCL 483.109. The application must include "a map or plat of [the] proposed line or lines which it desires to construct, showing the dimensions and character of such proposed pipe line or lines, its compression stations, control valves, and connections . . . ." *Id.* And the Commission must "examine and inquire into the necessity and practicability of such transmission line or lines and to determine that such line or lines will when constructed and in operation serve the convenience and necessities of the public" before it may approve the construction of the proposed pipeline. MCL 483.109. Thus, although MCL 483.109 does not specifically require the Commission to consider the environmental impact, it plainly permits the Commission to deny permission if after investigating the matter the Commission determines that the new pipeline would not serve the public convenience and necessity.

Since the enactment of Act 9, our Supreme Court has considered whether an agency must consider the environmental impact of a proposed project before granting permission to proceed. In *State Hwy Comm v Vanderkloot*, 392 Mich 159, 167-168; 220 NW2d 416 (1974) (opinion by Williams, J.), landowners opposed the condemnation of land for a highway, arguing in part that it was a swamp area with "increasingly rare or even unique ecological characteristics," and that the duties of the highway commission conflicted with Const 1963, art 4, § 52, relating to the protection of natural resources. In considering this argument, our Supreme Court held that the Legislature has an affirmative duty to enact legislation to protect the environment, but was not required to fulfill this duty by enactment of a specific provision in the highway condemnation act, MCL 213.361 *et seq.*, or every other piece of relevant legislation; instead, the Court explained, it had fulfilled its duty by enacting the environmental protection act.[4] *State Hwy Comm*, 392 Mich at 182-183 (opinion by Williams, J.), 194 (opinion by Levin, J.) (conceding that the environmental protection act provides substantive protections as well as procedural protections, but declining to consider the issue on the record before the Court). The Court explained that the Legislature accomplished this goal through two distinct methods: it provided a cause of action for the protection of Michigan's natural resources, and it provided that subject agencies had certain environmental obligations. *Id.* at 184. The Court determined that the environmental protection act specifically proscribed "pollution, impairment, or destruction" of natural resources "unless it is demonstrated that 'there is no feasible and prudent alternative to [the polluting, impairing, or destroying entity's] conduct and that such conduct is consistent with the promotion of the public health, safety and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment or destruction," and that "[t]his substantive environmental guideline is applicable to the [highway] Commission's administrative condemnation determinations." *Id.* at 185-186 (emphasis removed), citing MCL 691.1203, which has been replaced by MCL 324.1703; see also *Genesco, Inc v Dep't of Environmental Quality*, 250 Mich App 45, 55-56; 645 NW2d 319 (2002). Thus, although the specific provision of the environmental protection act cited by the court addressed the burden of proof for the cause of action created by that act, a plurality of our Supreme Court held that the act also established a substantive standard prohibiting the impairment of natural resources, which applies to an agency's determinations. *State Hwy Comm*, 392 Mich at 186, 190 (opinion by Williams, J.). The Court, however, went on to state that the declaration of necessity in the condemnation proceeding would be *prima facie* evidence of necessity and that a person challenging the agency's determination of necessity would have the burden to prove fraud or abuse of discretion, but that the commission's failure to reasonably comply with its duties could be a basis for finding fraud or an abuse of discretion. *State Hwy Comm*, 392 Mich at 189-190 (opinion by Williams, J.).

[4] The original environmental protection act was repealed by 1994 PA 451, and replaced by the Natural Resources and Environmental Protection Act, MCL 324.101 *et seq*., Part 17 of which is titled the Michigan Environmental Protection Act. The MEPA set forth in Part 17 is substantially similar to the original act.

Buggs and Bonamie argue the Commission did not perform the requisite Act 9 review because, in determining public necessity, it did not sufficiently consider the environmental effect of the pipelines. As noted above, in rejecting the motion for reconsideration, the Commission stated that it had no obligation to consider the environment impact under MEPA, but instead stated that it was required to look to Act 9 alone:

> [C]ontrary to the Petitioners' argument that the Michigan Environmental Protection Act "imposes a duty on the state and on agencies like this commission to consider the likely environmental effects of the proposed conduct," the Commission lacks statutory authority to enforce that law or other environmental laws. Further, the Petitioners have failed to identify any specific duties that the law imposes on the Commission.

The Commission, however, mistakenly characterized the nature of the obligation. Buggs and Bonamie did not ask the Commission to enforce the MEPA or another environmental law. They asked the Commission to comply with its duty to examine and inquire into the necessity and practicability of the pipelines and determine that the pipelines would serve the convenience and necessity of the public. And, under the decision in *State Hwy Comm*, that duty includes an obligation to consider the environmental effect that the proposed pipeline would have. Namely, it had to consider whether the proposed project would impair the environment, whether there was a feasible and prudent alternative to the impairment, and whether the impairment was consistent with the promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment, or destruction. *State Hwy Comm*, 392 Mich at 185-186 (opinion by Williams, J.).

As required by Act 9 itself, Encana Oil submitted applications, maps of the proposed gas lines, and specifications for the projects as required by the statute. The Commission's orders make it clear that it reviewed these materials. Both applications, when coupled with the assessments, indicated that the pipelines were necessary for access to the gas reserves in the Collingwood formation and that the proposed routes were those causing the least impact. Thus, Encana Oil provided proof of necessity and practicability, and that there was no feasible and prudent alternative. However, although the Commission found in a cursory manner that the pipelines would serve the public convenience and necessity, it did not otherwise expressly speak to necessity, practicability, feasibility, or prudence in its orders. Moreover, it did not address whether any impairment was consistent with "the promotion of the public health, safety and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment or destruction." *State Hwy Comm*, 392 Mich at 185 (opinion by Williams, J.). Thus, the Commission failed to follow the substantive requirement of MEPA, a statutory requirement independent of Act 9, and accordingly, its orders were unlawful.

Although MCL 324.1705(2) required a determination that took an environmental element into account, appellants incorrectly suggest that it required the Commission to conduct an independent investigation. There is no language in the statute to suggest that the Commission had any such duty. Moreover, *State Hwy Comm* indicated that the environmental effect of conduct had to be considered in making a determination, but it did not suggest that an agency had an independent duty to investigate. Thus, to the extent that the materials in Encana Oil's applications would allow the Commission to make a determination consistent with Act 9 and

MCL 324.1705(2), the Commission could base its determination on those materials. In this regard, it is noted that the motions to intervene were not before the Commission at the time it made its determinations regarding Encana Oil's applications. Thus, the allegations in those petitions did not have to be considered. However, Farrier indicated that there would be impairments to natural resources in his environmental impact assessments. He indicated that there would be, among other impairments, clearing of vegetation, but that the route would offer minimal impact because it would be along existing corridors. He further indicated that alternatives were reviewed and none appeared to have less impact. The Commission noted that these environmental assessments had been attached to the applications. However, it did not discuss the contents or expressly adopt Farrier's representation that alternatives were reviewed and none appeared to have less impact, i.e., that there was no feasible and prudent alternative to the impairment, and did not address whether the impairment was consistent with the promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment, or destruction. *State Hwy Comm*, 392 Mich at 185 (opinion by Williams, J.). Accordingly, it is necessary to remand this case for the Commission to expressly make such a determination.

Buggs and Bonamie argue that Farrier's environmental impact assessments were insufficient to allow the Commission to make the requisite findings required by the MEPA. They claim that the assessments themselves should have caused the Commission to realize that they were inadequate on their face: Farrier analyzed the impact within the proposed easement, but did not include the impact on the environment in the vicinity; Farrier professed not to know of protected or endangered species, but did not certify that there were none; and Farrier claimed to be a biologist, but listed no supporting credentials. They also assert that the assessments were not signed or dated. However, the cover pages bore a date of January 2013 and indicated that they were prepared by Farrier. Buggs and Bonamie cite no authority that speaks to the requisite sufficiency of proofs on which the Commission must base its decision. The assessments described the routes along existing corridors, indicated that to the best of Farrier's knowledge "there were no threatened or endangered species within the proposed easements" or "along the proposed routes," described the clearing that would take place, and represented that the

> workspace will be graded as near as possible to pre-construction contours and/or restored in accordance with Kalkaska County Road Commission permit requirements, and natural runoff and drainage patterns will be restored. All existing improvements, such as fences, gates, bar ditches, and beaver deceivers, will be maintained and repaired to as good as or better than pre-construction conditions. Permanent erosion control measures will be installed, and all disturbed workspace will be reseeded.

Although Buggs and Bonamie's claims that the Kirtland Warbler is protected or endangered and that its habitat would be affected are troubling, allegations to this effect were not before the Commission at the time it reviewed the applications. Moreover, allegations that Encana Oil intended to add more pipelines that would create new corridors would seem to be pertinent to future applications for pipeline approval, but not to the lines at issue. While the Commission might have been inclined to seek more information if cognizant of the requirement that it assess whether there were feasible and prudent alternatives and whether the conduct is consistent with the promotion of the public health, safety, and welfare in light of the state's

paramount concern for the protection of its natural resources from pollution, impairment, or destruction, the representations made by Farrier in the Assessments were not inherently suspect such that they could not be deemed substantial evidence on the whole record to support the Commission's findings.

III. CONCLUSION

Although the Commission minimally complied with the requirements for approving the applications under Act 9, it failed to follow the independent statutory requirement imposed under MEPA. Because its orders approving the pipelines were unlawfully issued, we vacate those orders and remand for a new necessity determination in both dockets. In making its new determinations of necessity, the Commission shall specifically address the environmental impact as required under the MEPA and the decision in *State Hwy Comm*, 392 Mich at 184-190 (opinion by Williams, J.).

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. We further order that none of the parties may tax their costs. MCR 7.219(A).

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter

STATE OF MICHIGAN

COURT OF APPEALS

In re Application of Encana Oil & Gas re Garfield 36 Pipeline.

JOHN BUGGS and DANIEL BONAMIE,

Appellants,

v

MICHIGAN PUBLIC SERVICE COMMISSION and DTE MICHIGAN GATHERING HOLDING COMPANY,

Appellees.

UNPUBLISHED
May 16, 2017

No. 329781
MPSC
LC No. 00-017195

In re Application of Encana Oil & Gas re Beaver Creek Pipeline.

JOHN BUGGS and DANIEL BONAMIE,

Appellants,

v

MICHIGAN PUBLIC SERVICE COMMISSION and DTE MICHIGAN GATHERING HOLDING COMPANY,

Appellees.

No. 329909
MPSC
LC No. 00-017196

Before: MARKEY, P.J., and MURPHY and METER, JJ.

PER CURIAM.

In these consolidated appeals, appellants John Buggs and Daniel Bonamie appeal an order of the Michigan Public Service Commission (PSC) granting applications filed by Encana Oil & Gas, Inc.,[1] to construct and operate natural gas pipelines. We affirm.

I. BACKGROUND

The PSC's order on appeal is the second order approving construction of natural gas pipelines known as Garfield 36 and Beaver Creek 11. The first order was challenged by appellants, and in *Buggs v Pub Serv Comm*, unpublished opinion per curiam of the Court of Appeals, issued January 13, 2015 (Docket Nos. 315058, 315064), this Court vacated the order and remanded the matter to the PSC for further proceedings, concluding:

> Although the Commission minimally complied with the requirements for approving the applications under Act 9, it failed to follow the independent statutory requirement imposed under MEPA.[2] Because its orders approving the pipelines were unlawfully issued, we vacate those orders and remand for a new necessity determination in both dockets. In making its new determinations of necessity, the Commission shall specifically address the environmental impact as required under the MEPA and the decision in [*State Hwy Comm v Vanderkloot*, 392 Mich 159, 184-190; 220 NW2d 416 (1974) (opinion by WILLIAMS, J.)]. [*Buggs*, unpub op at 11.]

Appellants attempted, for the second time, to intervene in the proceedings before the PSC.[3] The PSC denied the motion to intervene, noting that in an earlier order it concluded that Buggs and Bonamie did not meet the test for intervening and that the earlier order had not been appealed. The PSC also noted that in *Buggs*, *supra*, this Court did not instruct it to grant intervention on remand.

On remand from this Court, the PSC again approved the construction and operation of the natural gas pipelines. The PSC noted that it sought and received additional information regarding the environmental impact of the pipelines and the efforts made by Encana to determine that the pipelines' routes did not displace protected species or associated habitats. The PSC provided a 30-day public comment period after it received the additional information.

The PSC reexamined the evidence and made detailed findings. To provide context for our resolution of these appeals, we quote liberally from the PSC's opinion:

---

[1] Encana assigned its interest in the pipelines to appellee DTE Michigan Gathering Holding Company.

[2] The Michigan Environmental Protection Act, MCL 324.1701 *et seq*.

[3] Buggs and Bonamie first filed a petition to intervene after the PSC entered ex parte orders in January 2013 approving the pipelines. The PSC denied the petition in an order entered on April 16, 2013, and denied reconsideration in an order entered on June 28, 2013. Buggs and Bonamie did not seek leave to appeal the order denying the petition to intervene.

Garfield 36 Pipeline Project

In Case No. U-17195, Encana indicates in its application that the Garfield 36 Pipeline was to be constructed "adjacent to the well pad access road on Michigan Department of Natural Resource[s] (MDNR) land and within county road right of way." January 11, 2013 Application, p. 2. Encana's "Exhibit A" is a map showing the proposed route of the Garfield 36 Pipeline. It depicts a route that closely follows two roads, W. Township Line Road and Naples Road. The proposed route veers off of W. Township Line Road to cut a corner in meeting Naples Road. It then veers off Naples Road in a direct line to the closest gas well pad, State Garfield C4-36. Encana's Exhibit D is an environmental impact assessment regarding the project. It indicates that as the pipeline route leaves the well pad, it follows a well access road for 2,600 feet. Thus, the application and exhibits show that approximately 90% of the proposed route for the Garfield 36 Pipeline runs along already-existing roads, avoiding the need for the creation of new corridors.

The environmental impact assessment discusses the land use and ecology and describes the pipeline route area as primarily mixed deciduous forest and describes the area along the well access road as semi-open forest. Regarding impairment to protected wildlife, the assessment indicates that there are no threatened or endangered species within the proposed easement or along the proposed route to the best of the author's knowledge. Supplemental information filed in this docket on August 6, 2015, indicates that Encana submitted a request to the Michigan State University Michigan Natural Features Inventory (MNFI) requesting a review of the MNFI records regarding the potential presence of a protected species in the vicinity of the well sites and access roads used for the wells to which the proposed pipelines would ultimately be connected. Encana received a Rare Species Review response letter for the well site served by the Garfield 36 Pipeline. The letter stated that, "there are no legally protected or special concern species or other natural features within 1.5 miles of the project site" based on the MNFI database. Dean Farrier, whom Encana hired to prepare the environmental impact assessments, indicated in his August 4, 2015 letter to the Commission that, even though this Rare Species Review response letter was requested regarding the well sites to which the pipelines would ultimately connect, the 1.5 mile radius used in the database search includes the entire Garfield 36 Pipeline route.

In addition to the onsite survey of the well sites and access roads for the potential presence of threatened and endangered species that Mr. Farrier conducted in order to prepare the environmental impact assessments that he submitted to the MDEQ's Office of Oil, Gas and Minerals, Mr. Farrier also conducted both an initial review of the pipeline route for "obvious environmental concerns" as well as a "more thorough onsite survey" of the pipeline route "for the presence of protected species and habitat that might be impacted by pipeline construction." Dean Farrier's August 4, 2015 letter to the Commission, p. 2. He explained that he traveled the entire pipeline route and observed the cover

type and habitat that were present, specifically searching for dense young jack pine stands for the Kirtland's warbler habitat, large high crowning trees, ideal for raptor nests, and "frost pocket" areas where special species might be found. *Id*. Mr. Farrier indicated that his focus was on the potential presence of protected upland species and habitat, including Bald Eagle nests, other raptor nests, Kirtland's warbler habitat, frost pockets and dead trees with cracks or loose bark for bat roosts. *Id*. Mr. Farrier explained that the reason he focused on these protected species and habitats was because of his knowledge of the potential range and location of such species, their habitat, as well as MNFI Rare Species Review letters for other sites having a similar habitat to that along the pipeline route. He explained that he summarized his observations and conclusions regarding the habitat that was present and the absence of protected species within the easement and pipeline route in the environmental impact assessment report he prepared and submitted to the Commission in this matter.

Regarding wetlands and other surface waters, the environmental impact assessment submitted for the Garfield 36 Pipeline project indicates that the proposed route involves one wetland crossing, and further indicates that directional drilling will be used to avoid disturbance to this area. The proposed route includes directional drilling around wetlands for a distance of 1,027 feet. The assessment also provides that the directional drilling and construction activity involved will not result in ground disturbance to the wetland or surface waterbody banks and that a minimum buffer of 50 feet from wetland boundaries will be maintained. It further indicates that the proposed construction activity will not disturb the stream contained in the larger wetland and that a minimum depth of 10 feet will be maintained under the streambed.

Regarding the construction methods employed, Mr. Farrier writes in his environmental impact assessment that the clearing, removal of topsoil, and grading will be limited to a minimum area required for safe and efficient construction. The assessment discusses the procedure for the clearing of large vegetation, such as shrubs and trees, within the pipeline route. The assessment's summary concludes that the route proposed minimally impacts the local ecosystems and land use as it runs along existing corridors and is directionally drilled around the wetland. Therefore, the assessment concludes that the construction of the Garfield 36 Pipeline will not cause any new corridors.

The Commission also considered the public comments filed in this matter regarding the Garfield 36 Pipeline. Specifically, the Commission reviewed the comments the petitioners filed. The petitioners point out in their comments that they had, in their previous filings with the Commission, criticized the environmental impact assessments prepared for the pipeline construction projects on the grounds that Mr. Farrier lacked the credentials to support his claim to be a biologist, claimed no knowledge and checked no inventories regarding protected species, and because the assessments only purported to analyze conditions within the 35-foot easements as opposed to the surrounding vicinity. The comments

also note that the supplement does not discuss forest fragmentation resulting from future development of gas wells for gas production.

Regarding these statements, the Commission notes that Mr. Farrier's supplemental information provides an overview of his education and years of experience conducting surveys for the potential presence of protected species and their habitat, and also explains the lengths he went to in this matter to rule out the potential presence of protected species within the pipeline routes. With regard to the petitioners' criticism that the assessments improperly focus on the impact to the 35-foot easement as opposed to the "surrounding vicinity," the Commission observes that the pipeline installation project considered here does not, in and of itself, have much of an impact on the surrounding vicinity because all of the construction and installation work would legally have been limited to the easement area as opposed to the surrounding vicinity. Finally, a consideration of possible future gas well development for gas production and forest fragmentation resulting from gas production is neither ripe for review nor within the scope of the Commission's jurisdiction in this matter.[2]

The petitioners' comments discuss their affidavits as well as the affidavit of Gary Cooley, which were attached as "exhibits" to a previous petition for intervention and that apparently document past observations of Kirtland's warblers in the petitioners' [backyards] as well as Cooley's observations of two dead Kirtland's warblers in the path of an Encana/DTE power shovel. The pipelines in this matter were initially approved *ex parte*, the Commission has yet to grant the petitioners intervention, and the exhibits the petitioners attached to their various filings were not a part of the initial company application and filing the Commission considered when it originally approved of the pipelines. Thus, the Commission has not considered these affidavits, nor are they a part of the *ex parte* record in this matter. Nevertheless, the Commission notes that the petitioners have never alleged that their [backyards] are located within the 35-foot easement within which the pipelines were constructed. Moreover, the public comments filed do not include Mr. Cooley's basis for concluding that the birds he observed are in fact protected species or that they were presumably harmed because of pipeline construction activity within the proposed pipeline routes. Moreover, Encana's failure to inform DNR or adequately respond to Mr. Cooley's observations is of little consequence here both because the company's subsequent activities presumably occurred after the Commission initially approved construction of the pipelines and because they are outside the scope of this order.

Petitioners also take issue with the timing Mr. Farrier chose to conduct his on-site surveys of the proposed pipeline routes, suggesting that these surveys occurred in either mid-May or January, a time when Kirtland's warblers would not yet have arrived in northern Michigan. As petitioners acknowledge in their comments, the exact day or month during which Mr. Farrier conducted his on-site surveys is unclear. Nevertheless, Mr. Farrier writes that he conducted surveys at each location on two different occasions, both an initial review before Encana's engineers agreed on a proposed route, and a second more thorough

survey afterwards. Further, the fact that Mr. Farrier did not just limit his survey to actual sightings of protected species but also looked for the presence of dense young jack pines and other natural features that would serve as habitat for certain the Kirtland's warbler provides the Commission with some assurance that, even in the event that Mr. Farrier conducted both the initial review and the more thorough on-site survey during the winter months when the Kirtland's warbler was outside of Michigan, he would still have discovered its habitat in undertaking a thorough on-site survey during the winter months when the protected species was elsewhere. Thus, the fact that the Commission lacks information regarding the exact dates that the on-site surveys were conducted is not dispositive on the issue of whether the proposed project impairs the environment.

Finally, petitioners also criticize the environmental impact assessments submitted because they suggest that Mr. Farrier ignored wetland and stream areas along the Garfield 36 pipeline route, which amounted to 1,027 feet that was in the vicinity of the pipeline to be constructed. As both DTE Gathering and the petitioners acknowledge, those areas were left undisturbed due to the use of directional drilling. Because there was no disturbance to the surface, and no impact to threatened or endangered species, the Commission finds it reasonable that Mr. Farrier would focus on the potential presence of protected upland species and habitat. The Commission is satisfied based on the information provided in the assessment and supplemental information provided that the proposed project will not destroy, impair, or pollute wetlands or other surface waters.

Given the fact that 90% of the proposed route follows already existing rural roads, based on the assessment's determination that there will be no disturbance to wetlands, streams, or other surface waters, in light of the assessment's conclusion that construction of the pipeline will not cause any new corridors, and based on the assessment and the supplemental information provided that adequately describes the efforts made and resources used to determine no protected wildlife exists in the proposed easement or along the proposed route, the Commission finds that the Garfield 36 Pipeline project as proposed will not impair the environment.

Beaver Creek 11 Pipeline Project

Regarding the Beaver Creek 11 Pipeline project in Case No. U-17196, the application and exhibits presented show a 3.1 mile route that runs entirely along existing county roads or well access roads, again avoiding the need to create new corridors. Encana's application provides that the Beaver Creek 11 Pipeline "will be constructed adjacent to the well pad access road on Michigan Department of Natural Resource[s] (MDNR) land and within county road right of way on MDNR land." January 11, 2013 Application, p. 2. Encana submitted an environmental impact assessment as its Exhibit D that indicates the impact on the environment is "minimal."[3] The assessment indicates the pipeline route runs primarily through mixed deciduous forest, and that, to the best of the author's knowledge there are

no threatened or endangered species within the proposed easement or route. The assessment further indicates that there are no wetlands or stream crossings within the proposed route.

Having reviewed the application and supporting exhibits, the Commission further determines that there is no impairment to the environment resulting from the construction or installation of the Beaver Creek 11 Pipeline. The proposed 3.08-mile route runs along county and well access roads and crosses no wetlands or surface waters. The environmental impact assessment indicates that the entire proposed route is adjacent to existing corridors and does not require the creation of new corridors. It also indicates that the route traverses lands owned by the State of Michigan, with the exception of one area that is privately owned, where the route is in county right-of-way for King Road. The assessment further describes the land through which the proposed route runs as primarily mixed deciduous forest with Sugar Maple, Red Oak, Aspen and Birch being the dominant species.

In the environmental impact assessment, Mr. Farrier explains that there are no threatened or endangered species within the proposed easement to the best of his knowledge. Again, Mr. Farrier's August 4, 2015 letter states that the environmental impact assessment process began with Encana submitting a request to the MNFI staff requesting a review of the MNFI records regarding the potential presence of protected species in the vicinity of the well sites and access roads used for the wells to which the proposed pipelines would ultimately be connected. The Rare Species Review response letter for the Beaver Creek 11 Pipeline stated that it was "highly unlikely that listed species will be impacted by this activity." The response letter indicates that the listed species is a butterfly called Henry's elfin. Further, Mr. Farrier's August 4, 2015 letter explains that the determinations made in the Rare Species Review response letter related to the protected or special concern species or other natural features within 1.5 miles of the proposed well site, which would include 56% of the Beaver Creek 11 pipeline route. As with the Garfield 36 Pipeline, Mr. Farrier again indicates in his August 4, 2015 letter that he conducted two reviews of the pipeline route, an initial review of the route for "obvious environmental concerns" and a more thorough onsite-survey of the pipeline route for the presence of protected species and habitat that might be impacted by pipeline construction. As with the Garfield 36 Pipeline, Mr. Farrier conducted his on-site survey by traveling the entire pipeline route and observing the cover type and habitat present. Again, the focus was on the potential presence of protected upland species and habitat. Mr. Farrier's observations led him to conclude in the environmental impact assessment that no protected wildlife is known to exist within the proposed route.

Mr. Farrier discusses in the environmental impact assessment the construction methods to be used, explaining that the clearing, removal of topsoil, and grading will be limited to the minimum area required for safe and efficient construction and further setting forth the procedure for the removal of large vegetation such as trees and shrubs. It also discusses the method for excavating

and sloping the trench-line or ditch, and explains that gaps will be made in subsoil stockpiles so as to avoid ponding or excessive diversion of natural runoff during storm events in addition to implementation of erosion and sedimentation permit conditions, where applicable, and best management practices. The assessment's description of the construction methods further provides that, after construction, the workspace will be graded as near as possible to the pre-construction contours and/or restored in accordance with Crawford County Road Commission permit requirements and natural runoff and drainage patterns will be restored. In addition, permanent erosion control measures will be installed and all disturbed workspace will be reseeded. Again, as with the assessment for the Garfield 36 Pipeline, Mr. Farrier's environmental impact assessment for the Beaver Creek 11 Pipeline concludes by indicating that the proposed route minimally impacts the local ecosystems and land use, and that the construction of this pipeline will not cause any new corridors.

The Commission, having considered the applications and accompanying environmental impact assessment submitted as well as the supplemental information provided by Mr. Farrier, concludes that the construction and installation of the Beaver Creek 11 Pipeline as proposed does not impair the environment. The Commission's findings and conclusions that it articulates in this order with respect to petitioners' filed comments apply equally to both the Garfield 36 and the Beaver Creek 11 pipeline applications. Having considered the record in this matter, the Commission is satisfied that competent, material, and substantial evidence on the whole record supports the Commission's conclusion that environmental impairment has not been established.

The Commission further notes that the remaining criteria that the Court instructed the Commission to consider on remand, i.e. "whether there was a feasible and prudent alternative to the impairment; and, whether the impairment was consistent with the promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment or destruction" pertain to an agency finding that impairment to the environment has occurred. Here, however, the Commission concludes, based on the record before it, that the proposed pipeline projects did not impair the environment. Accordingly, the Commission need not consider feasible and prudent alternatives to the impairment, or whether the impairment was consistent with the promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its natural resources. For the reasons articulated in this order, the Commission finds that the proposed Garfield 36 and Beaver Creek 11 Pipelines will serve the public convenience and necessity, and that *ex parte* approval is appropriate.

---

[2] The Commission notes that, although petitioners alleged in their various filings with the Commission that the pipelines would serve as "bait" inviting the construction and addition of new gas wells in the area, the regulation of gas wells, or any potential impairment to the environment caused by hydraulic fracturing in

> Michigan is beyond the purview of the Commission. The Commission lacks the statutory authority to regulate hydraulic fracturing, or the drilling of gas wells in Michigan. That authority, and the concomitant environmental obligations that it engenders, rests with the State Supervisor of Wells and the Department of Environmental Quality. Here, the Commission's sole concern on remand is the effect of the pipelines' construction and operation on the environment and the state's natural resources.
>
> [3] It is important to note that Mr. Farrier's observations that the proposed pipeline projects have a minimal impact on the environment are not the same as a Commission finding that there is no impairment to the environment. The Commission applies the plain meaning to these terms and further notes that Mr. Farrier's determination that the proposed routes minimally impact local ecosystems and land use supports its conclusion that the projects as proposed do not impair the environment.

Appellants claimed an appeal from each PSC order and this Court consolidated the appeals for hearing and decision.

II. STANDARD OF REVIEW

Pursuant to MCL 462.25, all rates, fares, charges, classification and joint rates, regulations, practices, and services prescribed by the PSC are presumed, prima facie, to be lawful and reasonable. See *Mich Consol Gas Co v Pub Serv Comm*, 389 Mich 624, 635-636; 209 NW2d 210 (1973). A party aggrieved by an order of the PSC has the burden of proving by clear and satisfactory evidence that the order is unlawful or unreasonable. MCL 462.26(8). A final order of the PSC must be authorized by law and be supported by competent, material, and substantial evidence. Const 1963, art 6, § 28; *Attorney Gen v Pub Serv Comm*, 165 Mich App 230, 235; 418 NW2d 660 (1987).

We give due deference to the PSC's administrative expertise, and we will not substitute our judgment for that of the PSC. *Attorney Gen v Pub Serv Comm No 2*, 237 Mich App 82, 88; 602 NW2d 225 (1999). We give respectful consideration to the PSC's construction of a statute that the PSC is empowered to execute, and we will not overrule that construction absent cogent reasons. *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 103; 754 NW2d 259 (2008). If the language of a statute is vague or obscure, the PSC's construction serves as an aid to determining the legislative intent, and will be given weight if it does not conflict with the language of the statute or the purpose of the Legislature. *Id*. at 103, 108. However, the construction given to a statute by the PSC is not binding on us. *Id*. at 103. "Whether the PSC exceeded the scope of its authority is a question of law that we review de novo." *In re Complaint of Pelland Against Ameritech Mich*, 254 Mich App 675, 682; 658 NW2d 849 (2003).

III. ANALYSIS

Appellants argue that the PSC erred by denying their second attempt to intervene. Appellants assert that this Court's decision vacating the PSC's previous orders approving the

applications for the pipelines vacated the PSC's previous order denying the first motion to intervene. Appellants also assert that their interests were affected by the pipelines and they were entitled to intervene on that basis.

A lower court or tribunal must strictly comply with an appellate court's instructions on remand. *K & K Constr, Inc v Dep't of Environmental Quality*, 267 Mich App 523, 544-545; 705 NW2d 365 (2005).

Appellants did not appeal the PSC's order denying their first motion to intervene. In *Buggs*, *supra*, this Court vacated the PSC's orders granting the applications to construct the pipelines and remanded the matter to the PSC for further consideration pursuant to applicable requirements, but did not disturb the PSC's order denying appellants' motion to intervene. Appellants' assertion that by vacating the PSC's orders granting the applications this Court also vacated the PSC's order denying their motion to intervene is without factual or legal support. An appellate argument must be supported by citation to appropriate authority or policy. MCR 7.212(C)(7); *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 626-627; 750 NW2d 228 (2008) (no citation of authority for assertion that party entitled to evidentiary hearing). In addition, in the order denying appellants' second motion to intervene, the PSC reviewed appellants' position but found that no subsequent developments required it to change its previous conclusion regarding the timeliness of appellants' motion. We find no basis for appellate relief.

Next, appellants argue that the PSC, when conducting its environmental impact review, should have considered the environmental and forest-fragmenting effects in the vicinity of the lines and not simply within the routes and the corridors surrounding the routes.

In its initial decision, this Court held that the PSC failed to address the environmental impact of the pipelines when making its initial review of the applications. *Buggs*, unpub op at 9-11. The *Buggs* Court vacated the PSC's orders approving the applications and remanded this matter with instructions that the PSC "specifically address the environmental impact as required under the MEPA and the decision in *State Hwy Comm*, 392 Mich at 184-190 (opinion by WILLIAMS, J.)." *Buggs*, unpub op at 11.

On remand, the PSC reexamined the Environmental Impact Assessments (EIAs) submitted by Encana with the original applications, and requested and received supplemental information regarding the environmental impact of the pipelines. Thereafter, the PSC discussed the evidence as it applied to each pipeline and concluded that neither pipeline would have a negative impact on the environment. The PSC specifically noted the parameters of the remand as constructed by this Court. The PSC noted appellants' comments regarding the environmental impact on the vicinity surrounding each pipeline, as well as the risk of forest fragmentation resulting from future construction. The PSC concluded that the impact on the vicinity around each pipeline would be minimal because construction was limited to the easement area, and that the topic of future forest fragmentation was neither ripe for review nor within the PSC's jurisdiction.

Appellants assert that the PSC erred by failing to consider the environmental impact in the vicinity of the pipelines, and cite what they characterize as the "federal vicinity rule" as stated in 18 CFR 380.12(e)(5). This argument is without merit. The PSC conducted proceedings

as directed by this Court on remand. Neither MEPA nor the *State Hwy Comm* decision required the PSC to consider the federal vicinity rule when conducting its analysis. The PSC was required to strictly comply with this Court's instructions on remand, *K & K Constr*, 267 Mich App at 544-545, and did so. Nothing more was required.

Next, appellants argue that Encana's EIAs were inadequate because they failed to detect the presence of Kirtland Warblers, a bird in the area. The contend that Dean Farrier, the biologist who conducted the EIAs, was not put forward as an expert and did not conduct a complete and competent search on which the PSC could properly rely.

The law-of-the-case doctrine provides that an appellate ruling on a particular issue binds the appellate court and all lower tribunals with regard to that issue. *Reeves v Cincinnati, Inc (After Remand)*, 208 Mich App 556, 559; 528 NW2d 787 (1995). A question of law decided by an appellate court will not be decided differently on remand or in a subsequent appeal in the same case when the material facts remain the same. *Id*. "The doctrine applies to questions specifically decided in an earlier decision and to questions necessarily determined to arrive at that decision." *Webb v Smith (After Second Remand)*, 224 Mich App 203, 209; 568 NW2d 378 (1997). Whether the law-of-the-case doctrine applies is a question of law that we review de novo. *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001).

In their appeal of the PSC's initial orders approving Encana's pipeline applications, appellants argued that Farrier's qualifications, and therefore his EIAs, were insufficient to allow the PSC to make adequate findings for an analysis of the environmental impact of the pipeline projects. The *Buggs* Court rejected this argument, holding:

> Buggs and Bonamie argue that Farrier's environmental impact assessments were insufficient to allow the Commission to make the requisite findings required by the MEPA. They claim that the assessments themselves should have caused the Commission to realize that they were inadequate on their face: Farrier analyzed the impact within the proposed easement, but did not include the impact on the environment in the vicinity; Farrier professed not to know of protected or endangered species, but did not certify that there were none; and Farrier claimed to be a biologist, but listed no supporting credentials. They also assert that the assessments were not signed or dated. However, the cover pages bore a date of January 2013 and indicated that they were prepared by Farrier. Buggs and Bonamie cite no authority that speaks to the requisite sufficiency of proofs on which the Commission must base its decision. The assessments described the routes along existing corridors, indicated that to the best of Farrier's knowledge "there were no threatened or endangered species within the proposed easements" or "along the proposed routes," described the clearing that would take place, and represented that the "workspace will be graded as near as possible to pre-construction contours and/or restored in accordance with Kalkaska County Road Commission permit requirements, and natural runoff and drainage patterns will be restored. All existing improvements, such as fences, gates, bar ditches, and beaver deceivers, will be maintained and repaired to as good as or better than pre-construction conditions. Permanent erosion control measures will be installed, and all disturbed workspace will be reseeded."

> Although Buggs and Bonamie's claims that the Kirtland Warbler is protected or endangered and that its habitat would be affected are troubling, allegations to this effect were not before the Commission at the time it reviewed the applications. Moreover, allegations that Encana Oil intended to add more pipelines that would create new corridors would seem to be pertinent to future applications for pipeline approval, but not to the lines at issue. While the Commission might have been inclined to seek more information if cognizant of the requirement that it assess whether there were feasible and prudent alternatives and whether the conduct is consistent with the promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment, or destruction, the representations made by Farrier in the Assessments were not inherently suspect such that they could not be deemed substantial evidence on the whole record to support the Commission's findings. [*Buggs*, unpub op at 10-11.]

In its opinion on remand, the PSC noted that appellants had claimed that Farrier lacked the credentials to allow his EIAs, which were supplemented with further information and analysis, to be considered credible, and again found Farrier to be credible and his EIAs reliable.

The holding of the *Buggs* Court controlled on remand. At issue in the original appeal was whether the PSC conducted the required environmental impact analysis before granting Encana's applications to build the pipelines. As noted, this Court held that the PSC did not do so, and consequently vacated the PSC's orders and remanded for further proceedings. *Buggs*, unpub op at 11. However, the *Buggs* Court held that Farrier's EIAs were substantial evidence on which the PSC was entitled to rely. *Id*. at 10-11. Thus, the issue raised by appellants in these appeals was raised and decided in the previous appeal. The holding of the *Buggs* Court was binding on remand under the law-of-the-case doctrine and we find no error requiring reversal.

Finally, appellants argue that the PSC should have considered and found credible information contained in the second affidavit from Gary Cooley, who averred that he saw dead Kirtland's Warblers at or near a pipeline construction site.

In *Buggs*, this Court noted, in ruling that Farrier's EIAs were to be viewed as competent evidence, that appellants' claim that two Kirtland's Warblers were found dead at Encana's excavation site was not before the PSC at the time the PSC considered Encana's applications to build the pipelines. *Buggs*, unpub op at 10. Subsequently, on remand, the PSC found that because appellants had not been granted intervenor status, the affidavit was not part of the record before it. We find no error requiring reversal with regard to this finding.[4]

[4] Appellants insist that the affidavit should have been considered as part of the public commenting process. However, it is unreasonable to hold that the PSC must rule upon or take into explicit consideration every single comment raised by members of the public. At any rate, the fact remains that the PSC's order was supported by competent, material, and substantial evidence on the whole record.

Affirmed.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Patrick M. Meter

STATE OF MICHIGAN

COURT OF APPEALS

VENESSA DAVIS, JOHN DAVIS, RONALD W. RADATZ, NEIL J. HAMANN, JACQUELINE A. HAMANN, DENNIS J. HAMANN, JOSEPH SHARPE, JR., MICHELLE SHARPE, JOHN A. ESCHENBERG, II, LEAH ESCHENBERG, TERRY MERCHANT, TERESA MERCHANT, CHARLES COGGINS, II, KIMBERLY COGGINS, and CHARLES COGGINS, III,

Plaintiffs-Appellants,

v

SUNOCO PIPELINE LIMITED PARTNERSHIP, SUNOCO LOGISTICS PARTNERS OPERATIONS GP, LLC, ENBRIDGE ENERGY LIMITED PARTNERSHIP, ENBRIDGE PIPELINES LAKEHEAD, LLC, ENBRIDGE PIPELINES TOLEDO, INC., GREAT LAKES PETROLEUM CORPORATION, GREAT LAKES PETROLEUM COMPANY, and GREAT LAKES PETROLEUM TRANSPORTATION, LLC,

Defendants-Appellees.

UNPUBLISHED
June 18, 2020

No. 346729
St. Clair Circuit Court
LC No. 16-001197-CE

Before: GADOLA, P.J., and CAVANAGH and M. J. KELLY, JJ.

PER CURIAM.

Plaintiffs appeal as of right a stipulated order of dismissal without prejudice. On appeal, plaintiffs challenge the trial court order requiring them to amend their complaint to allege a standard of care consistent with the Pipelines Safety Act (PSA), 49 USC 60101 *et seq*., and the trial court order granting defendants partial summary disposition as to some of plaintiffs' nuisance claims. For the reasons stated in this opinion, we affirm in part, reverse in part, and remand for further proceedings.

I. BASIC FACTS

This case concerns pipelines and pipeline facilities located in Marysville, Michigan, that are owned and operated by defendants.[1] Sunoco owns real property, known as the Tank Farm, located at 250 Murphy Drive in Marysville, where it has petroleum storage tanks for holding petroleum products. Great Lakes, as well as Sunoco, owned real property on Gratiot Avenue in Marysville that was used as an offloading station. Enbridge owned and operated real property, known as the Metering Station, located at 215 Murphy Drive in Marysville. Enbridge also owned and operated two oil pipelines, known as Line 5 and Line 6B, which are pumped through the Metering Station. Plaintiffs are property owners from Marysville whose residences are located near the pipelines and facilities.

Relevant to this appeal, plaintiffs' first amended complaint alleged a claim for nuisance and a claim for negligent nuisance. Sunoco filed a motion for summary disposition arguing that plaintiffs' complaint was preempted by the PSA. Specifically, Sunoco contended that the PSA's preemption provision, 49 USC 60104(c), required plaintiffs to plead a federal standard of care because of the interstate nature of the pipelines and facilities at issue. Plaintiffs responded, arguing that their claims were not preempted but, instead, were "specifically preserved" by the PSA. Plaintiffs added that they could pursue their claims under state law, citing Mich Admin Code, R 336.1901 and St. Clair Township Ordinances, 75.

Following a hearing on the motion, the trial court entered an opinion and order denying Sunoco's motion for summary disposition, but requiring plaintiffs to file an amended complaint. The trial court explained that the pipelines and facilities at issue were "interstate" and, thus, under Section 60104(c) of the PSA, the state of Michigan was "expressly prohibited from adopting or continuing any standards" for defendants' facilities or transportation at issue. The trial court held that, under MCL 483.160, it was "clear that federal law preempts the regulation of interstate pipelines." The trial court concluded that any state tort claim involving safety standards of interstate pipelines or interstate pipeline transportation had to be consistent with "federal standards and regulations provided by the PSA." As a result, the trial court ordered plaintiffs to amend their complaint "to mirror federal standards."

Plaintiffs moved for reconsideration, which was denied. Plaintiffs also filed a second amended complaint. Many of plaintiffs' allegations remained unchanged from their first amended complaint. However, plaintiffs made additional claims, including alleged violations of federal, state, and local regulations, and they asserted that the PSA did not preempt some of their claims.

[1] For ease of reference, unless referring to each individual defendant is necessary, we will refer to Sunoco Pipeline Limited Partnership and Sunoco Logistics Partners Operations GP, LLC, collectively as "Sunoco," Great Lakes Petroleum Corporation, Great Lakes Petroleum Co., and Great Lakes Petroleum Transportation, LLC, collectively as "Great Lakes," and Enbridge Energy Limited Partnership, Enbridge Pipelines (Lakehead), LLC, and Enbridge Pipelines (Toledo), Inc., collectively as "Enbridge." When discussing all defendants, we will refer to them collectively as "defendants."

Plaintiffs expressly added allegations of violations of Rule 336.1901 and St. Clair Township Ordinance, 75, § 2(a)(3).

Enbridge filed a motion for partial summary disposition regarding plaintiffs' second amended complaint, seeking dismissal of plaintiffs' nuisance claim and asking the court to strike certain allegations under plaintiffs' negligent nuisance claim because they failed to state a claim. Enbridge argued that plaintiffs ignored the trial court's conclusion regarding preemption when they alleged violations of a state regulation and local ordinance. Great Lakes and Sunoco concurred with Enbridge's motion. In response, plaintiffs argued they properly pleaded the standard of care, explaining that there was "no distinct federal standard of care or state law standard of care." Plaintiffs argued the trial court was bound by Sections 60120(c) and 60121(d) of the PSA, which expressly state that state tort remedies are not preempted by the PSA.

Following oral argument, the trial court partially granted defendants' motion for summary disposition. Plaintiffs' motion for reconsideration was denied, and approximately eight months later, the trial court entered the stipulated final order of dismissal without prejudice. This appeal follows.[2]

II. SUMMARY DISPOSITION

A. STANDARD OF REVIEW

Plaintiffs argue that the court erred by ordering amendment of their complaint to add a violation of the PSA standard of care because the PSA savings clause expressly allows tort actions by private persons, which includes plaintiff's common law nuisance and negligent nuisance claims. Relatedly, plaintiffs argue that the trial court erred by summarily dismissing under MCR 2.116(C)(8) some of their claims. Plaintiffs assert that their claims were sufficiently plead and that none of the claims were preempted by the PSA. "Issues of law, such as federal preemption of state law, are reviewed de novo." *Packowski v United Food & Commercial Workers Local 951*, 289 Mich App 132, 138; 796 NW2d 94 (2010). "This Court reviews de novo a trial court's decision on a motion for summary disposition." *Allen v Bloomfield Hills Sch Dist*, 281 Mich App 49, 52; 760 NW2d 811 (2008). "A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the basis of the pleadings alone to determine if the opposing party has stated a claim for which relief can be granted." *Zaher v Miotke*, 300 Mich App 132, 139; 832 NW2d 266 (2013) (quotation marks and citation omitted). A reviewing court "must accept all well-pleaded

[2] In a motion to dismiss filed in this Court, Enbridge contended that because the stipulated order is not a final order, as defined by MCR 7.202(6)(a)(*i*), this Court should dismiss plaintiffs' appeal for lack of jurisdiction. This Court, however, denied the motion, determining that "[t]he November 16, 2018 order is a final order as defined by MCR 7.202(6)(a)(i)." *Davis v Sunoco Pipeline Limited Partnership*, unpublished order of the Court of Appeals, entered September 6, 2019 (Docket No. 346729). In its brief on appeal, Enbridge continues to assert that this Court lacks jurisdiction because the order appealed was not a final order. However, as this Court has already decided that issue on the merits in response to Enbridge's motion to dismiss, we will not again review the challenge to appellate jurisdiction.

allegations as true and construe them in the light most favorable to the nonmoving party. The motion should be granted only if no factual development could possibly justify recovery." *Id*. (citation omitted).

B. ANALYSIS

The Supremacy Clause of the United States Constitution declares that the laws of the Unites States "shall be the supreme Law of the Land . . . ." US Const, art VI, cl 2. "Under the Supremacy Clause, then, this Court is bound by federal statutes, despite any state law to the contrary." *Packowski*, 289 Mich App at 139. Therefore, "[i]f a state-law proceeding is preempted by federal law, the state court lacks subject-matter jurisdiction to hear the state-law cause of action." *Id*. at 139-140. Although three types of federal preemption exist, *id*. at 140, the only one relevant in this case is express preemption. "Express preemption occurs when a federal statute clearly states an intent to preempt state law or that intent is implied in a federal law's purpose and structure." *Id*.

The purpose of the PSA is "to provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities by improving the regulatory and enforcement authority of the Secretary of Transportation." 49 USC 60102(a)(1). Under 49 USC 60104(c),

> A State authority that has submitted a current certification under section 60105(a) of this title may adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation only if those standards are compatible with the minimum standards prescribed under this chapter. *A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.* Notwithstanding the preceding sentence, a State authority may enforce a requirement of a one-call notification program of the State if the program meets the requirements for one-call notification programs under this chapter or chapter 61. [Emphasis added.]

Thus, as recognized by this Court in *Panhandle Eastern Pipe Line Co v Musselman*, 257 Mich App 477, 482; 668 NW2d 418 (2003), "[f]ederal law preempts the regulation of interstate pipelines." It does not, however, preempt *all* claims having some connection with an interstate pipeline. Instead, 49 USC 60120(c) expressly provides that the PSA "does not affect the tort liability of any person."[3] And 49 USC 60121(d) states, "A remedy under this section is in addition to any other remedies provided by law. This section does not restrict a right to relief that a person or a class of persons may have under another law or at common law." These savings provisions plainly provide that under certain circumstances, a state-law tort claim may be maintained against a defendant notwithstanding the express preemption set forth in § 60104(c).

[3] Under the PSA, "person" includes corporations and companies. 49 USC 60101. Therefore, defendants' tort liability is implicated in Section 60120(c).

The United States Supreme Court has held that savings clauses, like the one in the PSA, that preserve substantive claims under state law, "remove[] tort actions from the scope of [an] express pre-emption clause." *Geier v Am Honda Motor Co*, 529 US 861, 868; 120 S Ct 1913; 146 L Ed 2d 914 (2000) (savings clause provided that compliance with a federal safety standard "[did] not exempt any person from any liability under common law"); but see *Morales v Trans World Airlines, Inc* 504 US 374, 387; 112 S Ct 2031; 119 L Ed 2d 157 (1992) (clauses that merely preserve remedies, rather than "general saving clause[s]," cannot supersede substantive preemption provisions). Although savings provisions "make[] clear that [an] express preemption provision does not of its own force pre-empt common law tort actions," conflict preemption must be considered. *Geier*, 529 US at 874. Therefore, courts should "decline[] to give broad effect to savings clauses where doing so would upset the careful regulatory scheme established by federal law." *Id*. at 862 (concluding that a common law "no airbag" claim conflicted with Department of Transportation regulations providing manufacturers with a variety of choices among passive restraint systems and was, therefore, preempted by the federal regulations).[4]

On appeal, plaintiffs assert the trial court improperly found that their nuisance claims regarding air pollution, relying on R 336.1901 and St. Clair Township Ordinances, 75, were preempted by the PSA. As noted above, § 60104(c) of the PSA expressly preempts all state and local laws affecting pipeline safety. See also *Washington Gas Light Co v Prince George's Co Council*, 711 F3d 412, 420 (CA 4, 2013) (The PSA "expressly preempts state and local law in the field of safety"); *Olympic Pipe Line Co v City of Seattle*, 437 F3d 872, 880 (CA 9, 2006) (concluding that the PSA preempted the City of Seattle from enforcing its own more stringent pipeline safety provisions).

Thus, the question is whether the state and local regulations plaintiffs relied on, R 336.1901 and St. Clair County Ordinances, 75, § 2(a)(3), are related to pipeline safety, and, therefore, preempted by the PSA. Rule 336.1901 states:

> Notwithstanding the provisions of any other rule, a person shall not cause or permit the emission of an air contaminant or water vapor in quantities that cause, alone or in reaction with other air contaminants, either of the following:
>
> (a) Injurious effects to human health or safety, animal life, plant life of significant economic value, or property.
>
> (b) Unreasonable interference with the comfortable enjoyment of life and property.

St. Clair Township Ordinances, 75, § 2(a)(3) defines a "nuisance" as an act, or omission to act, by a person that creates or permits:

> (3) Condition[s] which render persons insecure in life or use and enjoyment of their property such as effects and emanations from noise, glare, lights, vibration,

[4] Federal decisions are not binding on state courts, but can be considered for their persuasive value. *Abela v Gen Motors Corp*, 469 Mich 603, 607; 677 NW2d 325 (2004).

> dust, smoke odor, gas, chemicals, worms, insects, rodents, flies, decaying matter, whether such emanations are natural or result from human or mechanical alteration o[r] manipulation of materials[.]

Based on the language used, it is clear that neither R 336.1901, nor St. Clair Township Ordinances, 75, directly regulate pipelines and pipeline facility safety. They are merely general regulations aimed at ensuring that a property owner's use and enjoyment of his or her property is not negatively affected by air contaminants, R 336.1901, or other emissions, such as noise, dust, gas, or chemicals, St. Clair Township Ordinances, 75, § 2(a)(3).[5] Nothing in the rule or ordinance specifically regulates pipelines or pipeline facilities. And although defendants may complain that the rule and ordinance indirectly affect the safety of the pipelines and pipeline facilities, "[a] local rule may incidentally affect safety, so long as the effect is not 'direct and substantial.' " *Texas Midstream Gas Srvs, LLC v City of Grand Pairie*, 608 F3d 200, 211 (CA 5, 2010), citing *English v Gen Elec Co*, 496 US 72, 85; 110 S Ct 2270; 110 L Ed 2d 65 (1990); see also *Schneidewind v ANR Pipeline Co*, 485 US 293, 308; 108 S Ct 1145; 99 L Ed 2d 316 (1988) ("Of course, every state statute that has some indirect effect on rates and facilities of natural gas companies is not pre-empted."). Therefore, because R 336.1901 and St. Clair Township Ordinances, 75, do not directly regulate pipelines and pipelines facilities, but merely have an insubstantial and incidental effect on them, we conclude that the incidental effect on pipeline safety does not undermine Congress's intent in enacting the PSA. See *English*, 496 US at 85; *Schneidewind*, 485 US at 308. The trial court erred by concluding the PSA preempted plaintiffs' nuisance claims.

Moreover, as the claims being brought were state-law claims, not claims that the PSA was violated by defendants, the court erred by directing plaintiffs to amend their complaint to set forth a federal standard of care under the PSA. As a result, the trial court's dismissal of subparagraphs 40(i) and (j) in Count II of the second amended complaint was erroneous. For the same reason, the court's decision to dismiss parts of Count I's nuisance claim based upon its belief that plaintiffs had failed to plead a federal standard of care is likewise erroneous.

Defendants argue that Section 60121(a) of the PSA bars plaintiffs' claims because they did not allegedly comply with notice requirements, nor file suit for injunctive relief in federal court. The trial court, however, held that § 60121(a) did not bar plaintiffs' claims, and defendants have not filed a cross appeal of that decision. Accordingly, the issue is not properly before this Court and we will not address it.

Finally, we note that in its opinion granting partial summary disposition, the court stated that as it related to the claims against Enbridge set forth in Count I, "Without any specific factual allegations as to how or when Enbridge allegedly caused this nuisance [emissions and spills of petroleum products by virtue of working on the Metering Station], [plaintiffs'] allegation[s were] conclusory and [did] not meet the pleading requirements of MCR 2.111(B)(1)." Plaintiffs have

[5] It is worth noting that the United States Supreme Court has held that "[l]egislation designed to free from pollution the very air that people breathe clearly falls within the exercise of even the most traditional concept of what is compendiously known as the police power." *Huron Portland Cement Co v City of Detroit*, 362 US 440, 442; 80 S Ct 813; 4 L Ed 2d 852 (1960).

not challenged this portion of the court's ruling on appeal. Accordingly, we do not disturb this aspect of the court's ruling. The Court also concluded that Count I of plaintiffs' complaint did not contain any allegations relating to Great Lakes and that, as a result, it could only pursue its negligent nuisance claim against Great Lakes. Again, that decision has not been challenged on appeal, so we will not disturb it.[6]

Affirmed in part, reversed in part and remanded for further proceedings We do not retain jurisdiction. No taxable costs shall be awarded. MCR 7.219(A).

/s/ Michael F. Gadola
/s/ Mark J. Cavanagh
/s/ Michael J. Kelly

[6] We are aware that, in their brief, plaintiffs assert, broadly, that they sufficiently pleaded their claims against Enbridge, Sunoco, and Great Lakes. However, the nature of the argument was that, as all the nuisance activities occurred intrastate, a federal standard ought not apply to their nuisance claims. Nothing in the brief can fairly be construed as challenging the court's decision to hold that certain aspects of their claim against Enbridge were conclusory and that nothing in Count I of their complaint raised a claim against Great Lakes.

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of Enbridge Energy, Limited Partnership for the Authority to Replace and Relocate the Segment of Line 5 Crossing the Straits of Mackinac into a Tunnel Beneath the Straits of Mackinac, if Approval is Required Pursuant to 1929 PA 16; MCL 483.1 et seq. and Rule 447 of the Michigan Public Service Commission's Rules of Practice and Procedure, R 792.10447, or the Grant of other Appropriate Relief	U-20763 ALJ Dennis Mack

---

PROOF OF SERVICE

On the date below, an electronic copy of **Application for Leave to Appeal The Administrative Law Judge's Ruling on Motion In Limine By Michigan Environmental Council, Grand Traverse Band of Ottawa and Chippewa Indians, Tip Of The Mitt Watershed Council, and National Wildlife Federation** were served on the following:

Name/Party	E-mail Address
Counsel for Enbridge Energy, Limited Partnership. Michael S. Ashton Shaina Reed Jennifer Utter Heston	mashton@fraserlawfirm.com sreed@fraserlawfirm.com jheston@fraserlawfirm.com
Counsel for MPSC Staff Spencer A. Sattler Benjamin J. Holwerda Nicholas Q. Taylor	sattlers@michigan.gov holwerdab@michigan.gov taylorn10@michigan.gov
Counsel for Attorney General Robert P. Reichel	reichelb@michigan.gov
Counsel for Michigan Environmental Council (MEC), and National Wildlife Federation Christopher M. Bzdok Lydia Barbash-Riley	chris@envlaw.com lydia@envlaw.com

Counsel for Grand Traverse Band of Ottawa and Chippewa Indians (GTB) Bill Rastetter Christopher M. Bzdok Lydia Barbash-Riley	bill@envlaw.com chris@envlaw.com lydia@envlaw.com
Counsel for Environment Law & Policy Center Margrethe Kearney Esosa Aimufua Kiana Courtney Howard Learner	mkearney@elpc.org eaimufua@elpc.org kcourtney@elpc.org hlearner@elpc.org
For Love Of Water (FLOW) James Olson	jim@flowforwater.org
Counsel for Bay Mills Indian Community (BMIC) Christopher M. Bzdok Whitney Gravelle Kathryn Tierney Debbie Chizewer Christopher Clark David Gover Matt Campbell Mary Rock Megan Condon	chris@envlaw.com wgravelle@baymills.org candyt@bmic.net dchizewer@earthjustice.org cclark@earthjustice.org dgover@narf.org mcampbell@narf.org mrock@earthjustice.org MCondon@narf.org
Counsel for Tip of the Mitt Watershed Council Christopher M. Bzdok Lydia Barbash-Riley Abigail Hawley	chris@envlaw.com lydia@envlaw.com abbie@envlaw.com
Mackinac Straits Corridor Authority (MSCA) Raymond O. Howd Leah J. Brooks	howdr@michigan.gov brooksl6@michigan.gov
Michigan Propane Gas Association (MPGA) Paul D. Bratt Daniel P. Ettinger Troy M. Cumings Margaret C. Stalker	pbratt@wnj.com dettinger@wnj.com tcumings@wnj.com mstalker@wnj.com
Michigan Laborers' District (MLDC) Stuart M. Isreal Christopher P. Legghio Lauren Crummel	israel@legghioisrael.com cpl@legghioisrael.com crummel@legghioisrael.com

Nottawaseppi Huron Band of Potawatomi Indians Amy L. Wesaw John S. Swimmer	 amy.wesaw@nhbp-nsn.gov John.Swimmer@nhbp-nsn.gov
Little Traverse Band of Odawa Indians James A. Bransky	jbransky@chartermi.net

The statements above are true to the best of my knowledge, information and belief.

OLSON, BZDOK & HOWARD, P.C.
Counsel for GTB/MEC/Watershed Council/NWF

Date: November 6, 2020

By: Karla L Gerds Digitally signed by Karla Gerds Date: 2020.11.06 13:30:49 -05'00'

Karla Gerds, Legal Assistant
Kimberly Flynn, Legal Assistant
Breanna Thomas, Legal Assistant
420 E. Front St.
Traverse City, MI 49686
Phone: 231/946-0044
Email: karla@envlaw.com
kimbelry@envlaw.com
breanna@envlaw.com